Intermediary	Workload distributions: Percent of Natl. rcpts.	Workload distributions: Percent of receipts by type of bill: Inp. hosp.	Outp. hosp.	ECF	HHA	Workload performance indicators: Ratio of clear. to rcpts.	Weeks work on hand	Percent of bills pend. over 30 days	Percent req. add'l dev.	Administrative cost data: Total bene. pmts. (thousands)	Administrative expenditures (thousands)	Ratio of adm. expen. to bene. pmts.	Average adm. expen. per bill processed	Provider audit costs (thousands)	Intermediary processing time—Average Number of days between date rec'd and date appr'd for pmt.: Inp. bills	Outp. bills	Bills returned because of error: Percent by type of bill: Inp. hosp.	Outp. hosp.	ECF
Minnesota (Mutual)	[6]	0	0	100.0	0	110.4	2.8	17.4	16.7	230	5	2.33	5.89	4	[7]	[7]	[7]	[7]	5.3
Arizona (Mutual)	[6]	0	0	100.0	0	76.9	2.9	8.9	37.4	34	[10]	1.15	4.26	[10]	[7]	[7]	[7]	[7]	NR
Michigan (Mutual)	[6]	0	29.9	70.1	0	83.9	5.5	5.3	11.0	80	2	1.96	5.38	[10]	[7]	[7]	[7]	NR	NR
Iowa (Memphis-Aetna)	[6]	0	0	100.0	0	100.0	.2	11.1	11.3	[9]	[9]	[9]	[9]	[9]	[7]	[7]	[7]	[7]	[9]
Wisconsin (Aetna)	[6]	0	3.8	96.2	0	99.4	.5	0	10.6	[8]	[8]	[8]	[8]	[8]	[7]	[8]	[7]	[8]	[8]
Tennessen (Mutual)	[6]	0	0	100.0	0	121.4	2.1	7.1	2.3	19	1	2.75	2.76	[10]	[7]	[7]	[7]	[7]	NR
Florida (Mutual)	[6]	0	.7	99.3	0	76.2	6.1	9.5	23.5	22	1	2.37	5.27	[10]	[7]	[7]	[7]	NR	NR
Illinois (Mutual)	[6]	0	19.4	80.6	0	69.1	6.3	12.4	25.5	48	1	1.36	5.68	[10]	[7]	[7]	[7]	NR	NR
Hawaii (Kaiser)	[6]	96.2	1.5	0	0	91.6	3.0	12.1	4.2	302	2	.54	$3.33	0	[7]	[7]	[7]	[7]	[7]
North Dakota (Aetna)	[6]	0	3.1	96.9	0	74.8	3.1	32.0	37.1	[8]	[8]	[8]	[8]	[8]	[7]	[8]	[7]	[8]	[8]
Colorado (Aetna)	[6]	0	0	100.0	0	98.4	.2	0	23.4	[9]	[9]	[9]	[9]	[9]	[7]	[7]	[7]	[7]	[9]
Utah (Mutual)	[6]	0	0	100.0	0	91.8	.3	12.7	62.5	14	[10]	0.94	3.05	[10]	[7]	[7]	[7]	[7]	NR
Nebreska (Aetna)	[6]	0	10.3	89.7	0	106.2	.4	0	10.6	[8]	[8]	[8]	[8]	[8]	[7]	[8]	[7]	[8]	[8]
South Dakota (Aetna)	[6]	0	0	100.0	0	100.0	.4	0	9.3	[8]	[8]	[8]	[8]	[8]	[7]	[7]	[7]	[7]	[7]
Chattanooga, Va. (B/C)	[6]	0	0	100.0	0	109.4	.2	0	30.1	[2]	[2]	[2]	[2]	[2]	[7]	[7]	[7]	[7]	[6]
Minnesota (Aetna)	[6]	0	0	100.0	0	93.1	1.5	0	27.3	[6]	[6]	[6]	[6]	[6]	[7]	[7]	[7]	[8]	[6]
Ohio (Mutual)	[6]	0	0	100.0	0	16.3	1.7	49.6	63.2	[2]	[2]	[2]	[2]	[2]	[7]	[7]	[7]	[7]	NR
New Mexico (Mutual)	[6]	0	0	100.0	0	93.8	2.5	0	22.2	24	[10]	1.09	4.75	[10]	[7]	[7]	[7]	[7]	NR
Kansas (Mutual)	[6]	0	0	100.0	0	100.0	[11]	0	0	4	[10]	7.03	3.85	[10]	[7]	[7]	[7]	100.0	0
Nevada (Mutual)	[6]	0	0	100.0	0	100.0	0	0	0	[2]	[2]	[2]	[2]	[2]	[7]	[7]	[7]	[7]	NR

[1] Includes cost data for New York Department of Health, terminated in October 1969, P.R. Coop de Salud, terminated in December 1969, and Michigan Community Health terminated in August 1969.
[2] Individual State data are not available. Data included in State where home office is located.
[3] This intermediary does not process inpatient hospital bills.
[4] This intermediary does not process extended care facility bills.
[5] Individual State data are not available. Data included in Blue Cross of Charleston, W. Va.
[6] Less than 0.05 percent.
[7] This intermediary does not process inpatient and/or outpatient hospital bills.
[8] Individual State data are not available. Data included in Aetna at Peoria, Ill.
[9] Individual State data are not available. Data included in Aetna at Memphis, Tenn.
[10] Less than $500.
[11] Less than 0.05 weeks work on hand.

Note: NR—Not reported.

APPENDIX: HI INTERMEDIARY OPERATIONS: SELECTED WORKLOAD AND COST DATA, APRIL—JUNE 1970

WORKLOAD DISTRIBUTIONS

Percent of National Receipts—Total number of bills received by the intermediary during the quarter as a proportion of total national receipts during the quarter.

Percent Distribution of Receipts by Type of Bill—Percent distribution of total bill receipts during the quarter for each intermediary by type of bill—inpatient hospital, outpatient hospital, extended care facility, and home health agency. Total includes bills for ancillary services paid under Part B as well as other miscellaneous bills. As a result, detail shown may not add to totals.

WORKLOAD PERFORMANCE INDICATORS

Ratio of Clearances to Receipts—Total number of bills cleared during the quarter expressed as a percentage of total number received during the quarter. *Bills cleared* include bills paid, bills processed without payment, bills rejected or denied, and bills returned to providers for additional information.

Average Weeks Work on Hand—The average (mean) number of weeks work on hand during the quarter based on the number of weeks work at the end of each month. The number of weeks work on hand at the end of an individual month is computed using the following formula:

$$\text{Weeks work} = \left(\frac{\text{Bills pending end of month}}{\frac{\text{Bills cleared during the month}}{\text{Work weeks in month}}}\right)$$

Average Percent of Bills Pending Over 30 Days—The average (mean) percent of bills pending over 30 days during the quarter based on the percent of bills pending over 30 days at the end of each month. Individual monthly percentages are developed by taking the number of bills over 30 days old expressed as a percentage of the total pending workload.

Percent Requiring Additional Development—The total number of bills requiring investigation plus the number returned to providers for additional information during the quarter expressed as a percentage of the number of *bills reviewed* by the intermediary in the quarter. *Bills reviewed* include bills cleared plus bills investigated but not returned to providers.

ADMINISTRATIVE COST DATA

Total Benefit Payments—The total amount of health insurance benefit payments represented by checks or drafts drawn on the intermediaries' special bank accounts and reported on Interim Expenditure Reports (Form SSA–1527) covering the period July 1969 through June 1970, cumulative, and received in SSA prior to August 30, 1970.

Administrative Expenditures—Administrative costs incurred as reported by intermediaries on Interim Expenditure Reports (Form SSA–1527). Excluded are administrative costs incurred by the Blue Cross Association and provider auditing costs.

Ratio of Administrative Expenditures to Benefit Payments—Administrative expenditures during the July 1969–June 1970 period expressed as a percentage of benefit payments during the same period.

Average Administrative Cost Per Bill Processed—This unit cost is derived by dividing total administrative expenditures by the number of bills processed during the same period.

Provider Audit Costs—Includes costs related to annual audits of the books of accounts and records maintained by the providers of services and which pertain to the health insurance program. These costs are reported on the Interim Expenditure Reports and cover the period July 1969–June 1970.

Bill Processing Time in Calendar Days—Processing times are shown separately for inpatient and outpatient hospital bills. Average (mean) processing times are shown for intermediary processing, i.e., the average number of elapsed days between the date that the bills were received by the intermediary and the date that the intermediary approved the bills for payment. Data presented are based on bills processed by SSA during April, May, and June.

Bill Errors—Error Rate By Type of Bill—The number of bills which failed at least one of the clerical and/or utilization edits performed by SSA and returned to the intermediary expressed as a percentage of all bills reviewed for clerical and utilization errors by SSA during the quarter.

BILLS AND JOINT RESOLUTIONS INTRODUCED

The following bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as indicated:

By Mr. FULBRIGHT:

S. 1125. A bill to amend title 5, United States Code, with regard to the exercise of executive privilege. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 1126. A bill for the relief of Petko Mushikoff, Erika Mushikoff, Bettie Mushikoff, and Caren Mushikoff. Referred to the Committee on the Judiciary.

By Mr. COOK (for himself, Mr. METCALF, Mr. PACKWOOD, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENS, and Mr. WILLIAMS):

S.J. Res. 65. Joint resolution establishing the Federal Committee on Nuclear Development. Referred to the Joint Committee on Atomic Energy.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FULBRIGHT (for himself and Mr. CRANSTON):

S. 1125. A bill to amend title 5, United States Code, with regard to the exercise of executive privilege. Referred to the Committee on the Judiciary.

Mr. FULBRIGHT. Mr. President, I introduce a bill, and ask for its appropriate reference. Six years after the initial massive intervention of American forces in Vietnam, the American people and Congress still do not have clear answers to the basic questions: What are we fighting for? What are America's aims and interests in Indochina? At a recent meeting of the Foreign Relations Committee one member put this simple question to a high administration official: Is it your intention to withdraw all American forces from Indochina regardless of what

follows, or is it your intention to withdraw when, and only when, you can leave behind firmly established anti-Communist governments? That question—which the administration official declined to answer—is the seminal question at issue, and we are entitled to an answer. The persistent refusal of the administration to answer it—ostensibly on the ground that we cannot reveal our intentions to the enemy—means that the American people are being committed to an open-ended, undeclared, unconstitutional war for unknown, "classified" objectives.

We are entitled to more than an answer. As citizens of a constitutional democracy we are entitled, through the electoral process and through the legislative process in Congress, to ratify or reject any President's proposed course of action. He is not, in law, at liberty to make war as he alone sees fit. After several decades of quiescence in this matter, Congress has recently shown a healthy and responsible renewed interest in the war powers question, in its own responsibilities, and in practical means of restoring constitutional balance. Members of both Houses of Congress have proposed legislation which would specify those limited conditions, such as a sudden attack on the United States, under which the President can properly be authorized to use the Armed Forces without the prior consent of Congress. The Foreign Relations Committee is going to begin hearings on these proposals next week.

I submit today a proposal for breaching the wall of secrecy behind which the administration has barricaded itself in matters relating to foreign policy in general and to our war aims in Indochina in particular. It has to do with the practice known as "executive privilege," through which officials of the executive branch claim the right to withhold information from Congress when, in their own judgment, disclosure "would be incompatible with the public interest." [1] In the case of officials who are considered personal assistants to the President—such as Mr. Kissinger and his staff—as distinguished from Department heads—such as the Secretary of State—the claim of "executive privilege" is extended beyond the withholding of information to the withholding of the person himself, to his refusal even to appear before a congressional committee, either in public or in closed session. The Secretary of State—the present one like his predecessor—has repeatedly refused invitations from the Senate Foreign Relations Committee to testify in public, but he has usually acceded to invitations to testify in closed, or executive session. On these occasions the Secretary of State has all too often withheld information from the committee, but at least he has withheld it in person, giving Senators the opportunity to make their own views known and also to see if they can gage the intentions of the administration by listening to the Secretary's tone, so to speak, as well as to his words.

This procedure is by no means satisfactory. Neither the Cambodian nor the Laotian intervention, for example, were made known to the Foreign Relations Committee in advance, although on both occasions Secretary Rogers had met with the committee shortly before the military operations began, ostensibly to discuss those very subjects.

I should like to say that neither I nor the committee is interested in the military aspects so much as we are in the policy aspects—that is, the objectives of any move of this sort. We have by no means at anytime pressed this Secretary or any other for precise details regarding military dispositions.

To cite another example: Only through the diligent investigative activities of Senator SYMINGTON'S Subcommittee on U.S. Military Agreements and Commitments Abroad did it become known to Congress and the American people that the United States has been conducting a secret war in northern Laos, far away from the Vietnamese infiltration routes along the Ho Chi Minh Trail, at the cost of many American lives and billions of dollars. When former Ambassador William Sullivan was asked in his appearance before the Symington subcommittee why at an earlier hearing he had withheld information about the critical role the U.S. Air Force was playing in northern Laos, he replied, disingenuously, that he had not been asked any direct questions about U.S. air operations in northern Laos. My own comment at the time was that "There is no way for us to ask you questions about things we don't know you are doing."

It is, needless to say, even more difficult to ask questions of people who refuse to talk to you, as is the case, for example, with the President's principal foreign policy adviser, Dr. Kissinger. It was reasonable enough, in the old days, to permit the President to consult with an intimate adviser—such as Colonel House, under President Wilson—who would not be held to public or congressional account. Over the years, however, the President's "intimate" advisers have grown steadily in numbers and power until, at present Mr. Kissinger's office contains about 120 professional foreign policy experts, many of them career Foreign Service officers. Power and influence in the making of foreign policy have passed largely out of the hands of the State Department—which is accountable to Congress—into the hands of Mr. Kissinger's National Security Council staff—which is not, under the present practice, accountable to Congress. In the view of a reporter who has made a study of foreign policy making in the Nixon administration:

> Mr. Kissinger has become the instrument by which President Nixon has centralized the management of foreign policy in the White House as never before. . . .[2]

Although Mr. Kissinger appears on television, provides background briefings for the press and occasionally provides special briefings for selected Congressmen and Senators, he has steadfastly refused to appear before any congressional committee, either in public or in private. The result is that the people's representatives in Congress are denied direct access not only to the President, himself, but to the individual who is the President's chief foreign policy adviser, the author of his recent message on the state of the world, and the principal architect of our war policy in Indochina.

Executive privilege is a custom, not a law, and, even as a custom, it has been understood until recently to apply to information rather than to persons. Neither law nor custom authorizes individual advisers to the President to refuse to appear before a congressional committee. The refusal to give due account of the President's foreign policy is an extension of the arrogant contention, expressed in a Justice Department study in 1958, that—

> Congress cannot, under the Constitution, compel heads of departments by law to give up papers and information; regardless of the public interest involved; and the President is the judge of that interest.

The memorandum goes on to say that neither Congress nor the courts may compel the President to provide information when, in his own judgment, it would be inexpedient to do so.[3]

This, of course, is a repudiation of the very concept of a government of checks and balances. If the President has sole discretion to keep information from Congress and the country, he is in practice at liberty to do anything he wishes, at home or abroad, as long as he manages to keep it secret. That, indeed, is exactly what the last two Presidents have done in Indochina. President Johnson conducted an air war in Northern Laos which, as I mentioned before, was totally unknown to Congress and the country until Senator SYMINGTON'S subcommittee made it known. Similarly, President Nixon kept the present Laotian invasion under the cloud of a news embargo until it was well underway. Under our Constitution—in case anyone still cares—he should have come to Congress to request authority for American participation in the expansion of the war into Laos.

If Congress can be denied information regarding a war in which the country is engaged solely at the discretion of the President, then there is no possibility whatever of Congress discharging its constitutional responsibilities to declare war, raise and support armies, provide and maintain a navy, and make rules for the Government and regulation of the land and naval forces. In this area, as in others, executive secrecy can alter our form of government as decisively as would a constitutional amendment.

History, logic, and law show that the President is indeed obligated to provide pertinent information to Congress; nor can he claim to be the final judge of what in fact is pertinent. No one questions the propriety of "Executive priv-

[1] President Nixon's "Memo for the Heads of Executive Departments and Agencies," April 17, 1969.

[2] Hedrick Smith, "Foreign Policy: Kissinger at Hub," *New York Times*, January 19, 1971, p. 1.

[3] *The Power of the President To Withhold Information From the Congress—Memorandum of the Attorney General*, compiled by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, 85th Cong., 2d sess., pp. 3–4.

ilege" under certain circumstances; what is and must be contested is the contention that the President alone may determine the range of its application. In his authoritative book, "The President, Office and Powers," Prof. Edward Corwin comments:

> Should a congressional investigating committee issue a subpoena *duces tecum* to a Cabinet officer ordering him to appear with certain adequately specified documents and should he fail to do so, I see no reason why he might not be proceeded against for contempt of the house which sponsored the inquiry.[4]

The courts have not yet considered the Executive's claim that its invocation of executive privilege is unreviewable when invoked against Congress. The courts have left no doubt, however, that they will review such claims when they are invoked against private parties seeking governmental information. In United States against Reynolds, the Supreme Court stated that "judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers." Can Congress rights be less than those of a private individual? Can Congress be expected to abdicate to "executive caprice" in determining whether or not the Congress will be permitted to know what it needs to know in order to discharge its constitutional responsibilities? As James Madison said in "The Federalist," neither the Executive nor the legislature can pretend to an exclusive or superior right of settling the boundaries between their respective powers. The Supreme Court has ruled not only that the judiciary may review an executive decision to withhold information sought by an individual but has also held that under certain circumstances the courts might require the disclosure to court personnel of classified information.[5] It would be grotesque indeed if security grounds could be invoked to deny Congress information which was available both to executive and judicial officials. In some instances—such as the establishment of overseas bases and special briefings for newsmen from other countries—even foreigners are entrusted with information which is withheld from Congress.

If the matter of accountability were to come to a final test—and it is much preferable that it does not—there is no question of the legal authority of Congress, or of a congressional committee, to subpena a Government official, just as it can subpena a private individual to appear and give testimony, and to hold that individual in contempt should he fail to comply. Under section 134a of the Legislative Reorganization Act of 1946, every standing committee and subcommittee of the Senate is authorized:

> To require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to take such testimony and to make such expenditures . . . as it deems advisable.

In foreign as in domestic affairs there can be no question of the authority—indeed of the responsibility—of the Congress to exercise legislative oversight. This power is spelled out in section 136 of the Legislative Reorganization Act, which states that each standing committee—

> Shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government.

The power and duty of legislative oversight is in fact rooted deeply in our constitutional history. In the words of a study of the congressional power of investigation prepared for the Senate Judiciary Committee in February of 1954:

> A legislative committee of inquiry vested with power to summon witnesses and compel the production of records and papers is an institution rivaling most legislative institutions in the antiquity of its origin. Its roots lie deep in the British Parliament, and only in the light of a knowledge of these origins and subsequent developments does it become possible to comprehend its limits.[6]

Nor can there be any doubt of the right and duty of the Senate—and particularly its Committee on Foreign Relations—to oversee the conduct of a war. In 1861 a joint committee of the two Houses was formed for this purpose of investigating the conduct of the Civil War. This "Wade Committee," as it came to be known, diligently examined the conduct of Union military activities throughout the war; its reports filled four large volumes. In the case of the present war in Indochina, congressional oversight is not only desirable but essential, specifically for purposes of ascertaining the Executive's compliance with the Church-Cooper amendment and any future restrictions which Congress may impose, but also for the broader purpose of introducing some small measure of constitutional procedure in the conduct of this unconstitutional war.

Legislative oversight is of course impossible without pertinent information. Insofar as the Executive is at liberty to withhold information, he is also at liberty to nullify the ability of Congress to exercise legislative oversight. Contrary to the prevailing Executive view that the President alone may determine what he will reveal or withhold from the Congress, according to his judgment of the "expediency" of revelation, the Congress is not without resources to require the disclosure of pertinent information and the appearance of appropriate witnesses. A study of "Congressional Inquiry Into Military Affairs" prepared for the Foreign Relations Committee in 1968 points out that contempt of Congress by reason of the failure of a witness to testify or produce papers is punishable by law as a misdemeanor. Furthermore, there is no necessity for Congress or a congressional committee to rely on the Department of Justice to act in a contempt case. As an agent of the Executive, the Attorney General might be less than wholehearted in the prosecution of a recalcitrant witness. But, as the military affairs study points out:

> There can be no doubt that either House of Congress has the power to seize a recalcitrant witness, try him before the bar of the House, and punish him for contempt by imprisoning him in the Capitol.[7]

There have in fact been instances in which witnesses in contempt have been brought to trial before the House of Representatives, and there has been at least one instance in which the Senate has ordered the confinement of a contumacious witness in the common jail of the District of Columbia.

Mr. President, not for a moment would I wish to impose so drastic a procedure on Mr. Kissinger, for example, or any other official of our Government. It does seem to me of the greatest importance, nonetheless, that appropriate action be taken to provide the Congress with a reliable and continuing flow of information on foreign policy in general and, most urgently, on the aims and interests of the United States in Indochina as these are perceived by the present administration.

Stopping well short of attempting to deal with the principle of executive privilege in its fullest dimensions—a problem which requires detailed and careful study—I am proposing a bill which would require employees of the executive branch to appear in person before Congress or appropriate congressional committees when they are duly summoned, even if, upon their arrival, they do nothing more than invoke executive privilege. The purpose of this bill is to eliminate the unwarranted extension of the claim of executive privilege from information to persons. It would require an official such as the President's Assistant on National Security Affairs to appear before an appropriate congressional committee if only for the purpose of stating, in effect:

> I have been instructed in writing by the President to invoke executive privilege and here is why . . .

The purpose of this bill is to make a small breach in the wall of secrecy which now separates Congress from the Executive in matters of foreign policy, and particularly in matters pertaining to the war in Indochina. The specific change of procedure that would be required by this bill is a limited one, perhaps even a minor one, but its intent goes to the core of the democratic process by reaffirming the principle of accountability to Congress in the conduct of foreign policy.

Mr. CRANSTON. Mr. President, will the Senator from Arkansas yield?

Mr. FULBRIGHT. I yield.

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[4] Edward S. Corwin, *The President, Office and Powers* (New York University Press: 1957), pp. 281–282.

[5] *Halpern* v. *United States* (258 F. 2d 36, 44 (2 Cir., 1958)).

[6] *Congressional Power of Investigation*, Study Prepared at the Request of Senator William Langer, Chairman of the Committee on the Judiciary, by the Legislative Reference Service of the Library of Congress, U.S. Senate, 83d. Cong., 2d sess. (Washington: U.S. Government Printing Office, 1954), p. 23.

[7] *Congressional Inquiry Into Military Affairs*, A Study Prepared at the Request of the Committee on Foreign Relations, U.S. Senate, 90th Cong., 2d sess. (Washington: U.S. Government Printing Office, 1968), p. 7. Pertinent rulings were made by the Supreme Court in *Jurney* v. *McCracken*, 294 U.S. 125 (1935) and *McGrain* v. *Daugherty*, 273 U.S. 135 (1927).

Mr. CRANSTON. The distinguished chairman of the Committee on Foreign Relations has performed an invaluable service in bringing this matter before the Senate. If the role of Congress is to fulfill its constitutional obligations in matters of war, peace, and other matters, which I believe is threatened by the growth of the executive not only in this administration but in others by the problem of Executive privilege, which the Senator from Arkansas has so ably outlined here, I would like very much to work with the Senator in his endeavors to find a way to remedy this problem.

With the hope that the bill as proposed by the Senator will provide that remedy, or vehicle, for dealing with the great problems we face in our country today, I should like to be listed as a cosponsor.

Mr. FULBRIGHT. Mr. President, I would be very pleased to have the Senator as a cosponsor; and, Mr. President, I ask unanimous consent that the Senator from California (Mr. CRANSTON) be listed as a cosponsor.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. McGEE subsequently said: Mr. President, I rise almost inadvertently because I did not think I would be present when the Senator from Arkansas was delivering his address this morning.

I was captured by one reference on page 5 of this statement which alluded to the precedent in wartime of an oversight committee in this body. The reference was to the Wade committee. That was organized in 1861, at the time of the Civil War. For many years I have fancied myself as something of a history buff. I spent a good deal of time in that particular interval with one of the great architects of history during that period, Prof. James Randall, of Illinois.

The point is that the Wade committee still stands on the books as one of the most notoriously abusive committees in the history of our Nation. This flagrant group is always cited as how not to do it.

Inasmuch as I am a member of the Foreign Relations Committee, headed by the Senator from Arkansas, I feel a bit nervous about drawing attention today to Bluff Ben Wade, of Ohio, as they called him in those days and using that committee as one of the reasons for the action.

I think we are on much higher ground. I would hope that we would keep it there rather than emulate Ben Wade.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. McGEE. I yield.

Mr. FULBRIGHT. Mr. President, it was not for the purpose of emulating the committee, but only for the purpose of showing that Congress does have the authority to exercise oversight. It is a precedent for that purpose. Perhaps that is an extreme case, but that is the only reason it is cited.

I do not think for a moment that the Foreign Relations Committee would seek to emulate that example at all. On the contrary, the Foreign Relations Committee is for all practical purposes excluded from any oversight at all because of the failure to have access to information relevant to policymaking. It is only cited for that purpose alone.

I do not think the State Department would question the principle that Congress does have a responsibility and authority and ought to examine witnesses from the executive department.

Mr. McGEE. Mr. President, I do not question that at all. I just question that reference because I happen to be somewhat familiar with that history.

Mr. FULBRIGHT. That was a joint committee.

Mr. McGEE. The Senator is correct. I believe there were three from the Senate and four from the House. I have not had a chance to do my homework on that.

Mr. FULBRIGHT. The Senator is correct.

By Mr. COOK (for himself, and Mr. METCALF, Mr. PACKWOOD, Mr. RANDOLPH, Mr. SCHWEIKER, Mr. STEVENS, and Mr. WILLIAMS):

S.J. Res. 65. Joint resolution establishing the Federal Committee on Nuclear Development. Referred to the Joint Committee on Atomic Energy.

Mr. COOK. Mr. President, today I am reintroducing a joint resolution providing for the establishment of a Federal Committee on Nuclear Development. Except for the addition of language emphasizing the need to assess the potential impact of atomic energy on the environment, it is identical to Senate Joint Resolution 91 which I introduced in the 91st Congress.

The committee would, when established, study, review, and evaluate the Atomic Energy Act and the atomic energy program generally in terms of—

First, the impact of the atomic energy industry upon competitive industries;

Second, methods for effectively integrating atomic energy into the general energy complex of the United States so that reasonable priorities may be determined; and

Third, the potential environmental impact of atomic development upon the health and safety of the American public.

The peaceful uses of atomic energy and its implications for generations of Americans is obviously a matter of concern to all of us. I urge my colleagues to carefully study this matter and support this resolution.

It is my pleasure to add as cosponsors of this joint resolution Senators METCALF, PACKWOOD, RANDOLPH, SCHWEIKER, STEVENS, and WILLIAMS.

I ask unanimous consent that the joint resolution be appropriately referred and that my remarks of April 15, 1969, be printed in the RECORD at this point.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

SENATE JOINT RESOLUTION 91—INTRODUCTION OF A JOINT RESOLUTION ESTABLISHING THE FEDERAL COMMITTEE ON NUCLEAR DEVELOPMENT

Mr. COOK. Mr. President, I introduce, for appropriate reference, a joint resolution on behalf of myself and Senators Cooper, Mansfield, Mathias, Metcalf, Williams of New Jersey, Packwood, Stevens, Schweiker, and Randolph. The joint resolution, if passed, would establish the Federal Committee on Nuclear Development whose purpose it would be to assess and evaluate the current atomic energy program of the United States.

I claim no pride of authorship in this matter, as it was introduced in substantially the same form in the last Congress by my predecessor, Hon. Thruston Morton. At that time, February 28, 1968, he pointed out in great detail the history of peaceful development of atomic energy subsequent to World War II and described the current feeling among many in the scientific community that a review of the direction of our atomic energy program was greatly needed. My remarks today will be confirmed to a summation of Senator Morton's very comprehensive treatment of the subject.

Congress instructed the Atomic Energy Commission when it was established by the Atomic Energy Act in 1954 to promote and encourage the development of atomic energy. At least $2½ billion have been spent in the interim period to make nuclear plants efficient and able to compete with other power sources such as coal and oil. We appropriated these large sums for developing a new power source knowing full well that it would not be needed until 50 to 100 years hence when our supply of fossil fuels might begin to run short.

Congress adopted this atomic energy program, which resulted in a new technical development becoming, for the first time in our history, a Government monopoly. There is no question that the ability to create electrical energy through atomic fission is an amazing accomplishment but we also understand now what we did not realize in 1945—that atomic energy is no panacea.

Some might consider this resolution in some way a repudiation of the outstanding work of the Joint Committee on Atomic Energy. I assure Senators that I have nothing but the highest regard for the Members of the Congress who serve on this committee and I think they have ably carried out the original mandate of Congress which was to promote the peaceful uses of atomic energy. Unfortunately, the act made no provision for consideration of the need for nuclear energy, the fate of competing fuels, and the effect on the economy.

Intl agreements Bell file

SENATE ASKS CURB ON SECRET PACTS

Bill, Passed 81-0, Requires All Foreign Agreements to Be Submitted to Congress

By JOHN W. FINNEY
Special to The New York Times

WASHINGTON, Feb. 16—The Senate, in a step aimed at restricting secrecy by the executive branch on foreign commitments, unanimously approved legislation today that would require all international agreements to be submitted to Congress for its information.

The legislation, opposed by the State Department and adopted by the Senate by an 81-to-0 vote with no controversy, was put forward by the Senate Foreign Relations Committee as "a significant step toward redressing the imbalance between Congress and the executive branch in making of foreign policy."

A similar measure was passed unanimously by the Senate in 1956, but it died in the House of Representatives. The current legislation was introduced by Senator Clifford P. Case, Republican of New Jersey, in February, 1970, following the discovery of previously secret executive agreements signed in the nineteen sixties with Ethiopia, Laos, Thailand, South Korea and Spain.

Bipartisan Call-Up

The Case bill, which was reported out of the Senate Foreign Relations Committee last month, was called up today by the Democratic and Republican leadership of the Senate as noncontroversial legislation tha could fill a gap in the legislative schedule. As such, it was said, it was only coincidental that action was taken on the eve of President Nixon's departure for China.

In the House, where a similar bill has been introduced by Representative T. Bradford Morse, Republican of Massachusetts, Representative Thomas E. Morgan of Pennsylvania, chairman of the Foreign Affairs Committee, said the legislation would be given "prior consideration."

It appeared from today's 81-to-0 Senate vote that the Nixon Administration had made no concerted effort to block the Case bill on the Senate floor. One possibility was that the Administration was expecting the bill to die in the House, just as the 1956 legislation did.

At the White House, a spokesman said there would be no immediate comment on the Senate action.

Under the legislation approved today, the Secretary of State would be required to transmit to Congress the text of any international agreement —other than a treaty—within 60 days after it is signed, with the provision that any secret agreement be submitted to the Senate Foreign Relations Committee and the House Foreign Affairs Committee.

The legislation is particularly aimed at the practice of the executive branch of entering into executive agreements about which Congress sometimes is not informed.

Under existing law, the State Department periodically publishes all nonsecret international agreements, but on occasions the executive branch haw withheld from Congress secret agreements that it regarded as diplomatically or militarily sensitive.

The Senate bill makes it clear that under its provisions secret agreements affecting national security would be given to the two committees in secret and under conditions designed to protect the security.

The agreements that the State Department would be requested to transmit are primarily executive agreements, which do not require the Senators' approval, as treaties do. They thus would be submitted largely for the information of Congress and its committees.

The argument of the Foreign Relations Committee was that only by requiring the submission of such agreements could Congress begin to break down the secrecy of the exectuive branch and impose an obligation on the executive to report its foreign commitments to Congress.

While Congress under the legislation could not disapprove or negate the agreements, the Foreign Relations Committee contended that at least Congress would be kept informed foreign commitments and be in a spoition to challenge them at the time they were made.

Continued on Page 7, Column 1

THE WASHINGTON POST DATE 1/7/72 PAGE 21

Senate Votes For Hill Role On U.S. Pacts

by Spencer Rich
Washington Post Staff Writer

The Senate, demonstrating again its desire to assert more control over U.S. foreign policy, yesterday approved a bill requiring the Secretary of State to send Congress the texts of all international executive agreements signed by the United States. The vote was 81 to 0.

Sponsored by Sen. Clifford P. Case (R-N.J.), the bill was formally opposed by the State Department. No a single senator spoke against it. It goes now to the House.

Under the bill, the full text of all U.S. executive agreements with other countries would have to be sent to Congress within 60 days of being concluded. If there were compelling reasons to keep the text secret, the text would be sent to the Senate Foreign Relations and House Foreign Affairs Committees with a requirement of secrecy.

Case said that international executive agreements, which, unlike treaties, don't require approval by the Senate, had increasingly been used in recent years to undertake major diplomatic or military commitments to other nations without consulting Congress.

In many cases, he said, Congress hadn't even been informed of the existence of the agreement. In others, it was told that an agreement had been concluded but was given no details.

Case said that during World War II, provisions of the 1945 Yalta Agreement amended understandings reached at the 1943 Cairo Conference, but the Yalta alterations were kept secret for three years.

centers to ease pressures on existing metropolitan areas; now, therefore

"Be it resolved by the Senate of the Sixth Legislature of the State of Hawaii, Regular Session of 1972, that this body extend its congratulations and appreciation to Richard M. Nixon, President of the United States, members of the Congress of the United States, John D. Rockefeller, III, Chairman of the Commission on Population Growth and the American Future, and members of the Commission on Population Growth and the American Future for their unselfish concern and work towards the betterment of America for the people; and

"Be it further resolved that certified copies of this Resolution be transmitted to the President of the United States, the Speaker of the United States House of Representatives, the President and President Pro Tempore of the United States Senate, and John D. Rockefeller, III, Chairman of the Commission on Population Growth and the American Future."

A resolution adopted by the Pasadena Classroom Teachers Association, Pasadena, Tex., praying for the enactment of legislation to oppose forced consolidation of independent school districts in the State of Texas; to the Committee on the Judiciary.

The petition of Harold Vroom, and sundry other citizens of the State of New Jersey, expressing opposition to the massive busing of pupils; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. JAVITS:

S. 3446. A bill to amend section 7 of the Small Business Act. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. CASE:

S. 3447. A bill terminating certain assistance to Portugal and Bahrain until the agreements relating to the use of military bases by the United States in the Azores and Bahrain are submitted to the Senate for its advice and consent. Referred to the Committee on Foreign Relations.

By Mr. STENNIS (for himself and Mrs. SMITH) (by request):

S. 3448. A bill to authorize certain construction at military installations and for other purposes. Referred to the Committee on Armed Services.

By Mr. ROBERT C. BYRD (for Mr. JACKSON):

S. 3449. A bill to authorize and direct the Water Resources Council to coordinate a national program to insure the safety of dams and other water storage and control structures, to provide technical support to State programs for the licensing and inspection of such structures, to encourage adequate State safety laws and methods of implementation thereof; and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. CRANSTON:

S. 3450. A bill to authorize continuation of programs of ACTION, create a National Advisory Council for that Agency, and for other purposes. Referred to the Committee on Labor and Public Welfare.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JAVITS:

S. 3446. A bill to amend section 7 of the Small Business Act. Referred to the Committee on Banking, Housing and Urban Affairs.

ELIGIBILITY OF SHELTERED WORKSHOPS FOR SMALL BUSINESS LOANS

Mr. JAVITS. Mr. President, I introduce for appropriate reference a bill to amend the Small Business Act to make eligible for SBA loans nonprofit sheltered workshops for the blind and the severely handicapped.

These nonprofit sheltered workshops, which can serve up to an estimated 100,000 persons in every State of the Nation, seek out the most restricted of workers because such individuals require the most assistance. The workshops endeavor to maximize the earnings of these handicapped persons, giving them dignity and making them self-supporting rather than community supported. The workshops consequently must subsidize such items as the wages of low producers, health and rehabilitation services as well as management and overhead. These supportive services are funded by fees from State rehabilitation agencies, community chests, private donors, community fundraising drives, Government grants and bequests.

Since the workshops spend almost all their funds on their clients, they cannot accumulate capital funds; they also have limited access to other sources of capital in the community. Thus, the small business loan program offers a major hope that they can obtain the funds needed to tool up adequately to meet the demands for the goods and services which they can sell.

Access to SBA loans for capital expansion will increase the Nation's resources for handicapped persons. It will also help special workshop groups that ordinarily find difficulty in securing employment in most of the sheltered workshops, such as the homebound, the multihandicapped and minority group members.

Sheltered workshops have proven excellent risks—they can repay the money loaned them in addition to providing remunerative work and training opportunities where private enterprise has not done so.

The recently enacted Public Law 92-28—the so-called Javits-Wagner-O'Day Act—has opened up for these workshops new opportunities in securing Federal contracts for goods and services; the legislation I am introducing will afford nonprofit sheltered workshops the chance to grasp this new opportunity. And that is all that the handicapped ask of us—a chance.

Mr. President, I ask unanimous consent that the text of the bill may be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3446

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding at the end thereof a new subsection, as follows:

"(g) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any agency—

"(1) organized under the laws of the United States or of any State, operated in the interest of blind or other severely handicapped individuals, the net income of which does not inure in whole on in part to the benefit of any shareholder or other individual;

"(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

"(3) which in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection employs blind or other severely handicapped individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of these commodities or services."

By Mr. CASE:

S. 3447. A bill terminating certain assistance to Portugal and Bahrain until the agreements relating to the use of military bases by the United States in the Azores and Bahrain are submitted to the Senate for its advice and consent. Referred to the Committee on Foreign Relations.

Mr. CASE. Mr. President, I am today introducing a bill which would block all assistance to Portugal and Bahrain promised in recent executive agreements. This ban would remain in effect until the executive submits to the Senate as treaties these two executive agreements. I expect to offer the substance of this legislation as an amendment to the Foreign Aid Act.

I would have preferred that this matter be handled in a less drastic fashion. For several months now, I have been taking actions which urge the executive to submit to the Senate the agreements for U.S. military bases in the Portuguese Azores and in Bahrain—but to no avail.

I started out by writing to Secretary of State Rogers on December 9, 1971, urging that the agreement with Portugal for a 25-month extension of U.S. bases rights in the Azores in return for about $435 million in U.S. assistance and credits be submitted as a treaty.

I wrote:

> There is no question in my mind that in and of itself, the stationing of American troops overseas is an issue of sufficient importance to necessitate the use of the treaty process.

And I added that—

> The furnishing of economic aid to Portugal is complicated by the fact that Portugal is involved in colonial wars in Africa.

When it became clear that the administration would not react favorably to my letter, on December 16, 1971, with the cosponsorship of four other senior members of the Foreign Relations Committee, I introduced a resolution which called on the executive to submit the Portuguese agreement as a treaty.

Then on January 6, I read in the newspaper that the United States had entered into an "unpublicized" agreement with Bahrain for the establishment of a naval base on that island in the Persian Gulf. Again, the administration intended not to submit the agreement to the Senate but to settle the whole matter with a stroke of a diplomat's pen. Again, I pointed out on the Senate floor that the stationing of American troops over-

seas could lead to a commitment toward the host country and ultimately to war, and that the United States was becoming involved in a volatile part of the world where previously we had never had our own base.

On that day, I announced my intention to expand my resolution on the Azores to include also the submission to the Senate of the Bahrain agreement. The Foreign Relations Committee then held 3 days of public hearings during which the State Department testified it still would not submit the Azores and Bahrain agreements.

Nevertheless, on March 3, the Senate passed my resolution 50–6. The vote was significant not only because of the overwhelming majority by which it was adopted but also because Senators of all ideological persuasions joined in the effort to reassert the Senate's explicit constitutional role in the treatymaking process.

On March 6, I wrote again to the Secretary of State asking, in view of the Senate's passage of my resolution, if and when the executive would submit the two agreements to the Senate for advice and consent.

I have now received the State Department's reply—dated March 21—which says that after "serious consideration," it still will not submit the Bahrain and Azores agreements to the Senate. Claiming that the agreements "were appropriately concluded as executive agreements," the State Department's only reaction to the overwhelming vote of the Senate on my resolution is to "have noted the sense of the Senate."

I understand full well that a Senate resolution is not legally binding, so the State Department technically has the right only to "note" it. Yet, I must say that the attitude of the Department is most unwise and is shortsighted in the extreme.

The framers of the Constitution were explicit in their inclusion of the requirement for advice and consent of the Senate in the making of a treaty. And nowhere in the Constitution did they mention that the executive could skirt senatorial approval by simply calling a pact with a foreign government an executive agreement.

But the Department still refuses to take heed of the Senate's will on this question. So, I am faced with two choices: Either I can let the matter drop—content to have a resolution with my name on it passed by the Senate—or I can at least try to take further action. I have chosen the latter course because I believe a fundamental constitutional question is at stake.

The Senate cannot compel the executive to submit the agreements, but at the same time the Senate does not have to appropriate any money to pay for the agreements' costs.

I am today calling on my colleagues to uphold the Senate's vote of March 3 and cut off the funds needed to implement the agreements with Portugal and Bahrain until they are submitted as treaties.

Mr. President, I ask unanimous consent that there be printed in the RECORD the text of my bill, various background documents, and earlier editorial comment on the Portuguese and Bahrain deals.

There being no objection, the bill and material were ordered to be printed in the RECORD, as follows:

S. 3447

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress declares that, until the agreements signed by the United States with Portugal and Bahrain, relating to the use by the United States of military bases in the Azores and Bahrain have been submitted to the Senate as treaties for its advice and consent, assistance to be furnished Portugal and Bahrain as the result of such agreements should be terminated, and that Senate Resolution 214, 92d Congress, agreed to March 3, 1972, expressed the sense of the Senate that such agreements should be so submitted to the Senate as treaties.

(b) Therefore, notwithstanding any other provision of law, on and after the date of enactment of this Act—

(1) no vessel shall be loaned or otherwise made available to Portugal;

(2) no agricultural commodities may be sold to Portugal for dollars on credit terms or for foreign currencies under the Agricultural Trade Development and Assistance Act of 1954;

(3) no funds may be provided to Portugal for educational projects out of amounts made available to the Department of Defense;

(4) no excess articles may be provided by any means to Portugal;

(5) no defense articles may be ordered for Portugal from the stocks of the Department of Defense under section 506 of the Foreign Assistance Act of 1961; and

(6) the Export-Import Bank of the United States may not guarantee, insure, extend credit, or participate in any extension of credit, with respect to the purchase or lease of any product by Portugal, or any agency or national thereof, or with respect to the purchase or lease of any product by another foreign country or agency or national thereof if the Bank has knowledge that the product is to be purchased or leased principally for the use in, or sale or lease to, Portugal, until such agreement with Portugal is submitted to the Senate as a treaty for its advice and consent.

(c) Notwithstanding any other provision of law, on and after the date of enactment of this Act, no funds may be furnished by the United States to Bahrain for the use of any such base in Bahrain until such agreement with Bahrain is submitted to the Senate as a treaty for its advice and consent.

DEPARTMENT OF STATE,
Washington, D.C., March 21, 1972.

Hon. CLIFFORD P. CASE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CASE: The Secretary has asked me to reply to your letter of March 6, 1972 asking to be informed if and when the Administration plans to send the recent agreements with Bahrain and Portugal to the Senate for its advice and consent.

The Department has given serious consideration to S. 214, as is deserving of any resolution expressing the sense of the Senate on a matter of this nature. However, as Under Secretary U. Alexis Johnson stated in his testimony before the Senate Foreign Relations Committee on February 1, the Department of State believes that the agreement with Portugal to continue United States rights to station forces in the Azores and the agreement with Bahrain to permit the Middle East Force to continue to use support facilities in Bahrain were appropriately concluded as executive agreements. The agreements involve no new policy on the part of the United States nor any new defense commitment. Indeed, to seek Senate advice and consent would, in our view, carry a strong implication of new commitments that were not in fact intended by the parties. Of course the agreement with Portugal is in implementation of our already existing commitments under the North Atlantic Treaty, which was approved by an overwhelming majority of the Senate.

We realize, of course, that there may be a difference of view on the form an international agreement should take, and we have noted the sense of the Senate with respect to the Bahrain and Azores agreements as expressed in the vote on S. 214. We will continue to make every effort to keep the appropriate Congressional Committees informed of important agreements under negotiation and to consult with those Committees whenever there is a serious question whether an international agreement is to be made in the form of a treaty or otherwise.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

TREATY WITH PORTUGAL AND
U.S. ECONOMIC AID,
December 9, 1971.

The Hon. WILLIAM P. ROGERS,
Secretary of State, Department of State,
Washington, D.C.

DEAR MR. SECRETARY: In this morning's *New York Times,* it was reported that the United States and Portugal had negotiated an agreement regarding the future use by the United States of air and naval bases in the Portuguese Azores. It was further reported that the United States would furnish Portugal with economic aid in return for the use of the bases.

While not questioning the right of the Executive to negotiate agreements of this sort, I would like to receive your assurances that any final agreement will be submitted as a treaty for the Senate's advice and consent, and that no economic assistance will be furnished to Portugal without affirmative action of both Houses of Congress.

There is no question in my mind that in and of itself, the stationing of American troops overseas is an issue of sufficient importance to necessitate the use of the treaty process. It is unfortunate that American forces have been in the Azores since World War II only on the basis of executive agreements, but this past oversight in no way justifies the enactment of a new agreement without conforming to our Constitutional processes.

Similarly, the Executive has the right to discuss with any foreign government the furnishing of foreign assistance, but the Constitution clearly establishes that the Congress must appropriate (and hence authorize) the funds to institute such a program. Congress has provided the President with certain discretionary authority to make changes in the allocation of foreign aid funds, but the clear intent of Congress has been for this discretionary authority to be used in emergency situations. The new agreement with Portugal is not a matter on which the Executive must act immediately and thus would not and have time to come to Congress for authorization.

Finally, I would point out that the furnishing of economic aid to Portugal is complicated by the fact that Portugal is involved in colonial wars in Africa. You stated on March 26, 1970: "As for the Portuguese territories, we shall continue to believe that their peoples have the right of self-determination. . . . Believing that resort to violence is in no one's interest, we imposed an embargo in 1961 against the shipment of arms for use in the Portuguese territories."

Yet there would seem to be a clear tie between the furnishing of economic aid to

Portugal and the wars in the Portuguese colonies. *The New York Times* said this morning: "The loans could reduce pressure on Portugual's foreign currency reserves, which are under considerable strain because of the need to import foodstuffs in part because of the war against the guerrillas in Angola, Mozambique and Portuguese Guinea."

This additional complication is an added reason for the Executive Branch to seek the advice and consent of the Senate before final action is taken on the reported agreement with Portugal. I am confident you will agree and I await your affirmative response.

Sincerely,

CLIFFORD P. CASE,
U.S. Senator.

DEPARTMENT OF STATE,
Washington, D.C., December 17, 1972.

Hon. CLIFFORD P. CASE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CASE: The Secretary has asked me to reply to your letter of December 9 regarding the recent exchange of notes with Portugal formalizing continuance of the rights of the United States to use certain military facilities in the Azores.

The basis of our defense cooperation with Portugal is the North Atlantic Treaty, which was, of course, overwhelmingly approved by the Senate on July 21, 1949. The bilateral Defense Agreement of 1951 with Portugal, which was executed in implementation of the North Atlantic Treaty, provided for wartime use of the Azores facilities by United States forces "during the life of the North Atlantic Treaty" and for the peacetime presence of American personnel during a specified time for the purpose of preparing the facilities for possible wartime use, storing materiel, and otherwise, achieving a state of readiness. These rights to peacetime presence of United States forces in the Azores, in pursuance of the goals of the North Atlantic alliance, were extended by agreement on November 15, 1957 to December 31, 1962.

Upon the expiration of our agreed rights of peacetime use under this bilateral agreement in 1962, those rights were extended unilaterally by the Portuguese Foreign Minister in a letter of December 29, 1962 to the American Ambassador. The exchange of notes which took place last week restored those rights to a bilaterally agreed basis, as was the case from 1951 to 1962. This exchange of notes did not, of course, expand in any way our presence in the Azores, which has remained substantially the same for many years. Likewise, it does not expand our commitments beyond those accepted by the Senate in giving advice and consent to ratification of the North Atlantic Treaty.

The various forms of assistance we intend to make available to Portugal will come under existing programs of the Departments of Defense, Agriculture and the Export-Import Bank of the United States. All assistance is expressly conditioned on the availability of authorizing legislation and appropriated funds. The Department does not agree that there is "a clear tie between the furnishing of economic aid to Portugal and the wars in the Portuguese colonies." Contrary to the press article you cite, there is no strain on Portugal's foreign currency reserves, which, in fact, have been rising continually and now stand at an all-time high of $1.6 billion. The main effect of the Eximbank and PL-480 credits we are offering Portugal should be to increase the United States share of Portugal's import market, which is lower than our share of the market in any other Western European country.

I am enclosing for your information, a complete set of the documents exchanged last week between the Secretary and the Portuguese Foreign Minister. If you have any further questions about them, please do not hesitate to let me know.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

DECEMBER 9, 1971.

His Excellency, RUI PATRICIO,
Minister of Foreign Affairs of Portugal

EXCELLENCY: I have the honor to acknowledge receipt of Your Excellency's Note dated December 9, 1971, which reads as follows:

"I have the honor to refer to the letter of the Foreign Minister of Portugal to the Ambassador of the United States of America, dated December 29, 1962, and to the notes of this Ministry and of your Embassy, dated January 6, 1969, and February 3, 1969, respectively, relating to the conversations regarding the continued stationing of American forces and personnel at Lajes Base in the Azores and its use by the same.

"I have the honor to propose that the continued use by American forces of the facilities at Lajes Base be authorized by the Government of Portugal for a period of five years dating from February ", 1969.

"The continued use of such facilities will be regulated by the mutual arrangements affirmed and described in the letter of the Foreign Minister of Portugal dated December 29, 1962. Either party may propose the commencement of conversations regarding use of such facilities beyond the period described in this note six months before the expiration of such period, but no determination that a negative result has arisen in such conversations shall be made for at least six months following the expiration of such period. In the event neither party proposes the commencement of further conversations, a negative result shall de deemed to have arisen upon the expiration of the period described in this note.

"I should like to propose that, if agreeable to your Government, this note together with your reply, shall constitute an agreement between our two Governments."

I confirm to you that the above quoted proposal is acceptable to the Government of the United States, and that Your Excellency's note and this reply shall be regarded as constituting a formal agreement between the two Governments.

Accept, Excellency, the asurances of my highest consideration.

WILLIAM P. ROGERS,
Secretary of State of the United States of America.

THE SECRETARY OF STATE,
Washington, D.C., December 9, 1971.

His Excellency RUI PATRICIO,
Minister of Foreign Affairs of Portugal.

DEAR MR. MINISTER: I refer to the series of discussions that have taken between our two Governments designed to enhance our political, economic, and cultural relations and in particular to the discussions that have centered on Portugal's development programs in the fields of education, health, agriculture, transportation, and science.

As a result of these discussions, the United States agrees, within the limitations of applicable United States legislation and appropriations, to help Portugal in its development efforts by providing the following economic assistance:

1. A PL–480 program that will make available agricultural commodities valued at up to $15 million during FY-1972 and the same amount during FY-1973. The terms of the agreements under PL–480 will be 15 years at 4½ percent interest, with an initial payment of 5 percent and currency use payment of 10 percent.

2. Financing for certain projects of the Government of Portugal, as follows: The two Governments have reviewed development projects in Portugal valued at $400 million and the United States Government declares its willingness to provide, in accordance with the usual loan criteria and practices of the Eximbank, financing for these projects.

3. The hydrographic vessel USNS Kellar on a no cost basis, subject to the terms of a lease to be negotiated.

4. A grant of $1 million to fund educational development projects selected by the Government of Portugal.

5. $5 million in "drawing rights" at new acquisition value of any non-military excess equipment which may be found to meet Portuguese requirements over a period of two years. The figure of five million dollars is to be considered illustrative and not a maximum ceiling so that we may be free to exceed this figure if desired.

As soon as the Government of Portugal replies to this letter, discussions shall be initiated to implement the details of each of the individual items listed herein.

Sincerely yours,

WILLIAM P. ROGERS.

THE SECRETARY OF STATE,
Washington, D.C., December 9, 1971.

His Excellency RUI PATRICIO,
Minister of Foreign Affairs of Portugal.

DEAR MR. MINISTER: During the recent discussions between our two Governments regarding possible participation by my Government in the plans which your Government has drawn up for the economic and social development of your country, Portuguese and American technicians have reviewed various Portuguese proposals with a total value of some $400 million. These included, inter alia, projects for airport construction, railway modernization, bridge-building, electric power generation, mechanization of agriculture, harbor construction and town planning, and the supplying of equipment for schools and hospitals.

I am pleased to inform you that the United States Government is willing to provide, through the Export-Import Bank of the United States, financing for U.S. goods and services to be used in these projects, in accordance with the usual loan criteria and practices of the Bank. Applications for loans or preliminary commitments covering specific projects may be submitted to the Bank through the Portuguese Embassy in Washington or directly at any time and will receive expeditious handling.

Sincerely yours,

WILLIAM P. ROGERS.

JANUARY 14, 1972.

Hon. WILLIAM P. ROGERS,
Secretary of State, Department of State, Washington, D.C.

DEAR MR. SECRETARY: As you may know, I have already informally told the Department that I plan to include the Bahrain base agreement in my resolution on Azore bases (S. Res. 214). I am enclosing for your information a copy of the amended resolution.

Since we are now in the process of preparing for hearings on S. Res. 214, I would be grateful if you could send me the details of the Bahrain agreement as the Department did earlier on the Azores pact.

Sincerely,

CLIFFORD P. CASE, *U.S. Senator.*

DEPARTMENT OF STATE,
Washington, D.C., January 26, 1972.

Hon. CLIFFORD P. CASE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CASE: The Secretary has asked me to reply to your letter of January 14 requesting details on the agreement between the U.S. and Bahrain providing for the continued stationing of the U.S. Navy's Middle East Force in Bahrain.

I enclose a copy of the text of the agreement, which was concluded December 23, 1971, and will soon be published in the

Treaties and Other International Acts Series. The Chairman of the Foreign Relations Committee has also been provided with a copy.

I would like to stress that this agreement is essentially a logistics arrangement to permit Middle East Force to continue to carry out its mission of visiting friendly ports in the Persian Gulf and Indian Ocean area as a manifestation of the United States interest in the states of the region. The agreement with the Government of Bahrain was necessary because the British have relinquished the naval facilities in Bahrain, a small portion of which our Navy has utilized on an informal basis for over two decades. In addition, the British retrocession of legal jurisdiction over all foreigners in Bahrain as that state became fully independent last year necessitated a direct U.S.-Bahraini arrangement on the legal status of the personnel of Middle East Force.

The agreement with Bahrain involves no change in U.S. naval presence or mission in the area and the agreement in no way involves a political or military commitment to Bahrain or any other state.

Department officers would, of course, be pleased to have the opportunity to discuss with you the Bahrain agreement and its relationship to U.S. policy toward the Persian Gulf.

Sincerely yours,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

Enclosure: Text of Bahrain Agreement.

I, the undersigned consular officer of the United States of America, duly commissioned and qualified, do hereby certify that the attached is a true and faithful copy of the original this day exhibited to me, the same having been carefully examined by me and compared with the said original and found to agree therewith word for word and figure for figure.

In witness whereof I have hereunto set my hand and affixed the seal of the American Embassy at Manama, Bahrain this day of December 23, 1971.

RICHARD W. RAUH,
Vice Consul of the United States of America.

EMBASSY OF THE
UNITED STATES OF AMERICA,
Manama, Bahrain, December 23, 1971.

His Excellency SHAIKH MOHAMMAD BIN MUBARAK AL-KHALIFA,
Minister of Foreign Affairs, Government of the State of Bahrain.

EXCELLENCY: I have the honor to refer to the present deployment in Bahrain of the United States Middle East Force, including its flagship and other vessels and aircraft. The United States Government proposes to maintain this presence and its related support facilities subject to the following arrangements:

1. Vessels and aircraft assigned to or supporting the United States Force may freely enter and depart the territorial waters, ports, and airfields of Bahrain;

2. Members of the United States Force will be allowed freedom of movement within Bahrain and freedom of entry to and egress from Bahrain;

3. If there is any substantial change contemplated by the United States Government in the deployment of vessels or aircraft or numbers of personnel to be supported on Bahrain in connection with the United States Middle East Force, the United States Government will consult with the Government of Bahrain before effecting that change;

4. Passport and visa requirements shall not be applicable to military members of the United States Force except as shall be agreed upon between the two governments. All members of the United States Force, however, shall be furnished with appropriate identification which shall be produced, upon demand, to the appropriate authorities of the Government of Bahrain. Members of the United States Force will be exempt from immigration and emigration inspection on entering or leaving Bahrain, and from registration and control as aliens, but will not by reasons of their entry into Bahrain be regarded as acquiring any rights to permanent residence in Bahrain;

5. Members of the United States Force will respect the laws, customs and traditions of Bahrain, and abstain from activity inconsistent with the spirit of these arrangements. The authorities of the United States will take necessary measures to that end;

6. Members of the United States Force shall not be subject to taxation on their salary and emoluments received from United States sources or on any other tangible movable property which is present in Bahrain due to their temporary presence there;

7. The authorities of Bahrain will accept as valid, and without a driving test or fee, driving licenses or military driving permits issued by the authorities of the United States to members of the United States Force;

8. The authorities of the United States will pay just and reasonable compensation in settlement of civil claims (other than contractual claims; arising out of acts or omission of members of the United States Force done in the performance of official duty or out of any other act, omission or occurrence for which the Force is legally responsible. All such claims will be expeditiously processed and settled by the authorities of the United States in accordance with United States law;

9. The United States Force and its members may import into Bahrain (without license or other restriction or registration and free of customs, duties and taxes, equipment, supplies, household effects, motor vehicles and other items required by the Force or for the personal use of the members of the Force. Any items imported under this paragraph may be exported freely without customs, duties, and taxes. However, any property of any kind imported entry free under this paragraph which is sold in Bahrain to persons other than to those entitled to duty free import privileges shall be subject to customs and other duties on its value at the time of sale.

10. Personal purchases by members of the United States Force from Bahraini sources shall not be exempt from Bahraini customs, duties and taxes except for certain articles to be agreed upon between the two governments;

11. The Government of Bahrain shall exercise civil jurisdiction over members of the United States Force, except for those matters arising from the performance of their official duties. The Government of the United States shall exercise criminal jurisdiction over members of the United States Force. In particular cases, however, the authorities of the two governments may agree otherwise;

12. The term "members of the United States Force" means members of the Armed Forces of the United States and persons serving with, or employed by said Armed Forces, including dependents, but excluding indigenous Bahraini nationals and other persons ordinarily resident in Bahrain territory, provided that such nationals or other persons are not dependents of members of the United States Force;

13. The occupancy and use of the support facilities required by the United States Force will be governed by administrative arrangements between the United States authorities and the authorities of Bahrain or, as appropriate, private property owners;

14. Should either government determine at some future time that it is no longer desirable to continue the presence on Bahrain of the United States Middle East Force, the United States shall have one year thereafter to terminate its presence.

If the foregoing is acceptable to the Government of Bahrain, I have the honor to propose that this note and your note in reply confirming acceptance will constitute an agreement between our respective governments regarding this matter.

Accept, Excellency, the assurance of my highest consideration.

JOHN N. GATCH, JR.,
Charge d'Affaires ad interim.

STATE OF BAHRAIN,
MINISTRY OF FOREIGN AFFAIRS,
December 23, 1971.

JOHN N. GATCH, JR.
Charge d'Affaires ad interim, Embassy of the United States of America, Manama, Bahrain

SIR: I have the honour to acknowledge the receipt of your note dated December 23, 1971, reading as follows:

"His Excellency,

SHAIKH MOHAMMED BIN MUBARAK AL-KHALIFA, *Minister of Foreign Affairs, Government of the State of Bahrain.*

EXCELLENCY: I have the honour to refer to the present deployment in Bahrain of the United States Middle East Force, including its flagship and other vessels and aircraft. The United States Government proposes to maintain this presence and its related support facilities subject to the following arrangements.

1. Vessels and aircraft assigned to or supporting the United States Force may freely enter and depart the territorial waters, ports, and airfields of Bahrain;

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6. Members of the United States Force shall not be subject to taxation on their salary and emoluments received from United States sources or on any other tangible movable property which is present in Bahrain due to their temporary presence there;

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All such claims will be expeditiously processed and settled by the authorities of the

United States in accordance with United States law;

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12. The term "members of the United States Force" means members of the Armed Forces of the United States and persons serving with, or employed by said Armed Forces, including dependents, but excluding indigenous Bahraini nationals and other persons ordinarily resident in Bahrain territory, provided that such nationals or other persons are not dependents of members of the United States Force;

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14. Should either government determine at some future time that it is no longer desirable to continue the presence on Bahrain of the United States Middle East Force, the United States shall have one year thereafter to terminate its presence.

If the foregoing is acceptable to the Government of Bahrain, I have the honour to propose that this note and your note in reply confirming acceptance will constitute an agreement between our respective governments regarding this matter.

Accept, Excellency, the assurance of my highest consideration.

JOHN N. GATCH, Jr.,
Charge d'Affairs ad interim".

It is my pleasure to inform you that the Government of Bahrain agrees to all that was said in this note.

Accept, Sir, the assurance of my highest consideration.

MOHAMMAD BIN
MUBARAK AL-KHALIFA,
Minister of Foreign Affairs, Government of Bahrain.

[From the Washington Post, Dec. 18, 1971]

TRADE LEADS THE FLAG

Eager to sell more American goods overseas, the United States discovered that Portugal had (1) a long list of civilian needs and (2) a tradition of buying from West Europe. So the State Department went to work to open the Portuguese market. It succeeded handsomely. The other day it announced for the Export-Import Bank that the bank would finance American exports for Portuguese development projects (Lisbon happens to have an excellent credit rating) valued at about $400 million. Exim currently is financing only $17 million worth of exports to Portugal; the total since 1934 is only $175 million. Portugal, whose economic and political lag continues to keep it out of the European Common Market, had obvious economic reasons of its own to make the deal.

In return, Portugal got several things. First, it got a base-extension agreement from Washington. We have used Lajes field in the Azores since 1962 without a formal accord and, assured of use anyway, we didn't want or seek a renewal. But Lisbon sought the political imprimatur which, it felt, a formal renewal would bestow on its general policy. Second, Portugal got a visit from Mr. Nixon, who met Prime Minister Caetano (and French President Pompidou) there this week. Mr. Caetano may not do much for Mr. Nixon's political image but Mr. Nixon does plenty for Mr. Caetano's. And third, Lisbon got a few other conspicuous goodies, such as $30 million worth of PL 480 food, $5 million worth of civilian gear (roadscrapers) from Pentagon "excess" stocks, and a $1 million grant for education projects "selected by the government of Portugal."

Well, these days export promotion is all the rage. And if the United States in fact needs an Atlantic base to track Soviet subs and to keep an eye on the mouth of the Mediterranean, then it's not outlandish that it should sign for it. Often, after all, as with Spain last year, base agreements are paid for in military supplies or in credits for such supplies, not in credits for development goods, as is the case now with Portugal.

There is, however, a high price to pay; many Americans, and black Africans, wish we weren't willing to pay it. It is to give Europe's last colonial power extra status and encouragement in its dominion over Portuguese Guinea, Angola and Mozambique. By allowing trade priorities to lead it into closer association with Lisbon, Washington unavoidably identifies itself further with a colonial regime. It did so without a word to indicate it may have some residual sympathies for Africans fighting for independence. It did so with a gratuitous visit to the Azores by Mr. Nixon. And it did so without any visible effort to separate the negotiation or at least the announcement of the base and credits deals so as to avoid the damaging impression that the credits were some kind of aid given in return for the base.

There is also the question raised by Senator Case's resolution calling on the President to submit the new pact to the Senate as a treaty demanding ratification: "I cannot believe that the founding fathers would not consider to be a treaty an agreement, such as the reported one with Portugal, which calls for the stationing of American troops overseas and which furnishes a foreign government with a reported $435 million in assistance." We don't think the $400 million in export credits can fairly be counted as aid, but Mr. Case has a good point anyway. "Nowhere in the Constitution," he said, "did the [the founding fathers] mention that the Executive could skirt senatorial approval simply by calling a pact with a foreign government an Executive agreement."

[From the Trenton Evening Times, Dec. 20, 1971]

ADVICE AND CONSENT

The five senators who are seeking to have the administration submit the recent agreement with Portugal to the Senate for its advice and consent may be batting their heads against a stone wall. But they deserve an A for effort and their proposal merits the thoughtful consideration of their colleagues and the American public.

Under the accord, which the administration describes as an executive agreement not legally subject to congressional ratification, the United States promises Portugal up to $435 million in economic and social development credits in return for continued use of air and naval bases in the Azores.

Senator Case of New Jersey, a member of the Foreign Relations Committee, immediately wrote Secretary of State Rogers demanding that the pact be submitted to the Senate as if it were a treaty because it involves the stationing of American troops overseas. The Case move was not unprecedented. Senator Fulbright, the chairman of the committee, had sought unsuccessfully last year to have the administration submit a bases agreement with Spain to Senate consideration. Now Sens. Case and Fulbright have been joined by Sens. Javits of New York, Symington of Missouri and Church of Idaho in the introduction of a resolution that would declare it to be the "sense of the Senate" that any new agreement with Portugal for military bases or foreign assistance be submitted as a treaty for the Senate's advice and consent, and that no economic assistance be furnished Portugal without affirmative action by both houses of Congress.

The justification of an arrangement with a highly authoritarian regime that has been engaged for a decade in wars against nationalist guerrillas in Africa might be a distasteful and difficult problem for the administration. But that does not justify the bypassing of the constitutional role of the Senate in the treaty-making area. And, as Senator Case said, the framers of the Constitution "did not mention that the executive could skirt senatorial approval by simply calling a pact with a foreign government an executive agreement."

[From the Long Island Newsday, Dec. 22, 1971]

THE AZORES AGREEMENT

The recent decision of the Nixon administration to negotiate a five-year agreement with Portugal allowing this nation to use air and naval bases in the Azores has distressed one member of our United Nations delegation to the point of resignation.

And—as a black man and an American—Rep. Charles Diggs (D-Mich.) had good reason to be upset. The Azores agreement, said Diggs upon leaving the UN mission, was just another example of the "stifling hypocrisy" that characterizes this nation's policy toward black Africa.

For, the agreement comes complete with a $436,000,000 American donation to Portugal—money, said Diggs, that will be used to the disadvantage of suppressed blacks in Portugal's African territories.

Diggs is not the only person in Washington perturbed by the agreement. Sen. Clifford Case (R-N.J.) and four other senators, all members of the Foreign Relations Committee, last week introduced a "sense of the Senate" resolution that would put the upper house on record as opposing any new agreement with Portugal involving aid and military installations not first cleared by the Senate as a treaty.

The State Department says the White House was able to act unilaterally in this instance because the pact was an "executive agreement" and *not* a treaty. But Case and his co-sponsors—including Sen. Jacob Javits (R-N.Y.) and J. William Fulbright (D-Ark.)—are not satisfied with that answer.

On humanitarian and economic terms, the agreement with Portugal is questionable, at best. And, as an instrument of practical necessity, it is of doubtful purpose. An outpost in the Azores hardly seems vital to our national defense.

We urge the Senate to pass the Case resolution quickly when Congress reconvenes next month. Perhaps then the White House will get the message and re-think its position, at the very least when it considers future arrangements with foreign governments. Major U.S. support for the Portuguese—and the concomitant loss of respect for U.S. intentions among emerging African nations—is too vital a matter to be settled by Presidential decree.

[From the New York Times, Dec. 26, 1971]

IN CONTEMPT OF THE CONSTITUTION

Since World War II, the United States has had the privilege of refueling its military planes at an air base in the Portuguese Azores. This arrangement included port facilities for the U.S. Navy. A so-called "executive agreement" was entered into between this Government and Portugal and regularly renewed until 1962, when the Portuguese allowed it to lapse because of their resentment against the Kennedy Administration's anti-colonial policy in Africa. Use of the facilities continued, however, without a formal agreement. About 1,500 American servicemen have been stationed in the Azores for many years.

Earlier this month, President Nixon revived the agreement and not only renewed it for five years but also granted $435 million in economic aid to Portugal without consulting Congress.

Air and Naval bases, the stationing of troops overseas, the granting of money—these are the very substance of foreign policy. If the Senate is to exercise its constitutional authority to advise and consent in the making of foreign policy, it has an obligation to pass judgment on these issues.

Under the North Atlantic Treaty, of which Portugal is a signer, and under various laws enacted in the past the Nixon Administration can find a color of legality for the latest Azores deal. But the truth is that the President did not submit this agreement to the Senate as a treaty because he knew that he could not get two-thirds approval. It is doubtful if he could get the support of a simple majority. Rather than put the question to a test, he has put himself in contempt of the plain intent of the Constitution. It is an odd posture for a President who claims to be a "strict constructionist."

It is worth recalling that in 1947 when President Truman wanted to extend a smaller amount of aid—$400 million—to Greece and Turkey, he addressed a joint session of Congress and committees of Congress held lengthy hearings before approval was granted.

The amount of assistance granted to Portugal is enormous in terms of that small country's limited budget. It is also politically significant because it eases Portugal's budgetary difficulties when her finances are strained by the cost of combating the guerrilla warfare of the black rebels in the African colonies. Do the American people with their anti-colonial traditions wish to provide a subsidy to this last ramshackle little empire?

Senator Case, Republican of New Jersey, and four other members of the Senate Foreign Relations Committee from both parties have challenged Mr. Nixon's righthanded behavior by introducing a resolution calling upon him to submit the Azores agreement to the Senate for ratification as a treaty. If the Senate wishes to restore its constitutional credibility as a partner in the making of foreign policy, it will adopt this resolution.

[From the Washington Post, Jan. 9, 1972]

WHAT'S OUR GAME IN THE INDIAN OCEAN?

The stated grounds for the new American naval role planned in the Indian Ocean are so flimsy that one can only wonder if it has not been undertaken merely to provoke "the lady," as Indian Prime Minister Gandhi is apparently known in the White House these days. On the one hand, the larger and more frequent patrols will supposedly fill the "vacuum" being left by the British; on the other, they will offset the expanding but still modest presence (10 ships) of the Russians. Take your pick—or take both; they're small.

The Pentagon makes no effort to identify any newly threatened American interest. Rather, it says the Navy is eager for Indian Ocean "operating experience," vessels are available from the Vietnam war, and "we do have the capability." In a similar pose of innocence, the Pentagon calls attention to its new mid-Ocean "communications center" on Diego Garcia, as though to say, we've got it so let's use it.

Just last July, addressing a House Foreign Affairs subcommittee, administration witnesses could discern no pressing reasons for enlarging the then-modest American naval presence in and about the Indian Ocean. Since then, of course, the Indo-Pakistani war has taken place. In a gesture intended, according to the "Anderson papers," to distract Indian forces from Pakistan, the United States sent a task force including aircraft and helicopter carriers into the Indian Ocean. The administration's explanation that the ships were meant to evacuate Americans, if a threat to them materialized, must be set against the fact that three weeks after the war, the ships are still there. Is this not the spirit in which the new patrols have been ordered?

For the United States substantially to upgrade its politico-military role in an ocean heretofore spared the excesses of great-power competition is, however, a major move deserving of thorough public discussion. It goes well beyond the administration's disturbing step, just revealed, to take over from the British a naval base on Bahrain in the adjoining Persian Gulf; Senator Case has correctly demanded that this new executive agreement be submitted to the Senate as a treaty. Just what American interests are being served, and how? Will the American move solidify or loosen the Soviet purchase in India? Should we move unilaterally into a new theater, international sea though it be, when no litoral state has invited us and when all litoral states have just demanded in a General Assembly resolution that the big powers stay out? Should we consider responding in kind to the public Soviet offer of last July to negotiate naval limits in the Indian Ocean and elsewhere? Will our increased presence there give the Russians a stronger claim to increase their presence in the Caribbean?

We would have thought that the vaunted "Nixon Doctrine" militated against such an initiative as the President has now taken in the Indian Ocean. Or is this Doctrine already extinct?

[From the New York Times, Jan. 10, 1972]

NEEDED: CANDOR AND CONSENT

From the strategic viewpoint it makes good sense for the United States to maintain a modest naval task force in the Persian Gulf, as it has done for twenty years. What concerns us about the new arrangement for a permanent American naval station on Bahrain is the same problem that bothers Senator Case of New Jersey and four of his Foreign Relations Committee colleagues.

The agreement, signed wtih the newly-independent Government of Bahrain Dec. 23, was not announced; it was confirmed by Washington only after a New York Times dispatch had disclosed its existence, it was not in the form of a treaty, which would require Senate advice and consent, but an executive agreement, which does not have to be submitted to Congress at all.

It thus fits the pattern of Administration behavior illustrated only last month by revival of a pact with Portugal for continuing use of bases in the Azores in return for $535 million in credits, and by the signing last year of a new agreement with General Franco for bases in Spain at a comparable price. Mr. Case and his colleagues, who have already asked the Administration to submit the pact with Portugal as a treaty, say they will broaden their resolution to include the Bahrain agreement.

The presence in the Persian Gulf of even a converted seaplane tender and two destroyers—the current size of the task force—could bolster stability in a volatile area. Along with the decision to deploy Seventh Fleet patrols more frequently in the Indian Ocean, the force at Bahrain could offset an expanding Soviet naval presence and fill a vacuum left by Britain's withdrawal last year.

But if anything is clear about American military deployment and American bases in Asia after the bitter disillusionment in Indochina, it is that the Administration must make its case openly for every major move—with Congress and the country. Senator Case deserves plaudits, as usual, for reminding the Administration that establishment of an American base abroad is "a very serious matter" on which the Congress should be consulted.

[From the Philadelphia Evening Bulletin, Jan. 10, 1972]

SHOWING THE FLAG OFF INDIA

The U.S. Senate is restive over the emerging American presence in the Indian Ocean. And properly so, despite the Navy's argument that the "showing of the flag," in the shape of the giant nuclear carrier Enterprise, is necessary to counter Soviet penetration in this area of fast fading British influence.

Several senators have posed two critical questions: Could the deployment and the simultaneous leasing of an old British base from the Sheikdom of Bahrain precipitate the same disastrous sequence of events which culminated in the Vietnam War? And shouldn't the Bahrain agreement be submitted to the Senate for ratification?

There is, of course, a distinction to be made between the deployment of a carrier off the Indian subcontinent to assert "freedom of the (Indian) seas" and the leasing of a base.

The former suggests a transient presence, to be augmented, reduced, or, as the Navy asserte in this instance, to be withdrawn altogether, periodically.

But a base, in anybody's definition—the Senate's or the Nixon Administration's—is just the dangerous stuff unwanted commitments are made out of. There's always the danger the Bahrain agreement might escalate to a commitment far exceeding Mr. Nixon's "low (Asian) profile . . ." And this possibility is all the more real for the fact that Bahrain views the agreement as an effective counter to territorial demands by Iran and Iraq.

Thus, the understandable anxiety of U.S. Senator Case (R-NJ) and Senator Fulbright (D-Ark). It may well be that the senators overreach in demanding that not only the Bahrain accord but the recent agreement with Portugal for expanded U.S. use of the Azores be submitted to the Senate for ratification. But one thing is certain. Only such demands, registered in firm and uncompromising language, can set the stage for the comprehensive debate such agreements dictate.

The debate may not bring the vote on ratification Mr. Case wants, or even prove that the accords are "treaties," properly subject to Senate action. But surely debate on such a critical constitutional question would serve to set and illuminate the limits of the U.S. commitment, on Bahrain and the Azores.

It is knowing precisely where the limits are that prevents or, at least substantially reduces, the threat of another Vietnam.

BACK TO THE CONSTITUTION

With no fanfare at all President Nixon has now entered into an agreement to establish a naval base on Bahrain, an island in the Persian Gulf that recently proclaimed its independence. Sen. Case of New Jersey rightly protests that the agreement is actually a treaty, and he insists it should be submitted to the Senate as the Constitution directs.

President Nixon is probably quite right in supposing that the base on Bahrain makes sense. He might even have been right in suppositions leading up to another so-called executive agreement with Portugal concerning bases in the Azores. But his rightness should not be permitted to obscure the central point, that major agreements with foreign nations should be submitted to the Senate for its review and advice.

The President's power in foreign affairs is enormous, which has been demonstrated for years in Vietnam and lately again in the war between India and Pakistan. But the Constitution and common sense insist that it be not unlimited. Congress does have its role.

There is need for debate of an issue like a naval base in the Persian Gulf. That is a dangerous part of the world. As Sen. Case points out, Iran has lately occupied certain islands in the Persian Gulf, and there is a territorial dispute among several Arab countries about islands there. The United States could become involved, and the Senate should have full knowledge of the possibilities.

Sen. Case has been joined by Sens. Javits, Fulbright, Church, and Symington in sponsoring a resolution calling for submission of the Azores agreement to the Senate for confirmation as a treaty. He now intends to submit a new resolution on Bahrain or to extend the Azores resolution to cover Bahrain.

Mr. Case stated the case well when he said:

The Senate's treaty-making role is so clearly defined in the Constitution that it should be redundant to be introducing resolutions calling for the Senate to give its advice and consent to treaties. Yet the Senate's role in the treaty-making process has become so eroded that we have no choice.

By Mr. STENNIS (for himself and Mrs. SMITH) (by request):

S. 3448. A bill to authorize certain construction at military installations and for other purposes. Referred to the Committee on Armed Services.

Mr. STENNIS. Mr. President, for myself and the senior Senator from Maine (Mrs. SMITH) I introduce, by request, a bill to authorize construction at military installations and for other purposes.

I ask unanimous consent that the letter of transmittal requesting introduction of the bill and explaining its purpose be printed in the RECORD immediately following the listing of the bill.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, D.C., March 23, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is forwarded herewith a draft of legislation "To authorize certain construction at military installations and for other purposes."

This proposal is a part of the Department of Defense legislative program for FY 1973. The Office of Management and Budget on March 6, 1972, advised that its enactment would be in accordance with the program of the President.

This legislation would authorize military construction needed by the Department of Defense at this time, and would provide additional authority to cover deficiencies in essential construction previously authorized. Appropriations in support of this legislation are provided for in the Budget of the United States Government for the FY 1973.

Titles I, II, III, and IV of this proposal would authorize $1,869,250,000 in new construction for requirements of the Active Forces, of which $980,396,000 are for the Department of the Army; $540,869,000 for the Department of the Navy; $301,585,000 for the Department of the Air Force; and $46,400,000 for the Defense Agencies.

Title V contains legislative recommendations considered necessary to implement the Department of Defense family housing program and authorizes $1,073,684,000 for costs of that program for FY 1973.

Title VI contains authorization to expand the Homeowners Assistance Program (authorized by section 1013 of Public Law 89-754) to cover two limited situations in which Department of Defense homeowners outside the United States have not been eligible for assistance.

Title VII contans General Provisions applicable to the Military Construction Program.

Title VIII totaling $97,185,000 would authorize construction for the Reserve Command Components, of which $33,570,000 is for the Army National Guard; $33,500,000 for the Army Reserve; $14,715,000 for the Naval and Marine Corps Reserves; $9,000,000 for the Air National Guard; and $6,400,000 for the Air Force Reserve. These authorizations are in lump sum amounts and will be utilized in accordance with the requirements of chapter 133, title 10, United States Code.

The projects which would be authorized by this proposal have been reviewed to determine if environmental impact statements are required in accordance with Public Law 91-190. Eighteen projects have been identified which may require environmental impact statements. Environmental statements will be submitted to the Congress by the military departments when required procedures have been completed.

Sincerely,

MELVIN R. LAIRD.

By Mr. ROBERT C. BYRD (for Mr. JACKSON):

S. 3449. A bill to authorize and direct the Water Resources Council to coordinate a national program to insure the safety of dams and other water storage and control structures, to provide technical support to State programs for the licensing and inspection of such structures, to encourage adequate State safety laws and methods of implementation thereof; and for other purposes. Referred to the Committee on Interior and Insular Affairs.

NATIONAL SAFETY OF DAMS ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Washington (Mr. JACKSON), I introduce a bill and I ask unanimous consent that a statement prepared by Senator JACKSON together with the text of the bill be printed in the RECORD at this point.

There being no objection, the statement and bill were ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR JACKSON—NATIONAL SAFETY OF DAMS ACT

Mr. President, I introduce for appropriate reference the "National Safety of Dams Act."

This measure would provide for an expedited national program, coordinated by the Water Resources Council, to insure the safety of dams and other water storage and control structures. At the request of the Governor of any State, the Council, together with State officials, would prepare a technical assistance plan to insure the safety of water storage and control structures in that State. Under the Council's direction, technical assistance would be provided to the State by the Bureau of Reclamation and Geological Survey, the Army Corps of Engineers, and the Soil Conservation Service for its program of licensing and inspection of such structures and for other activities necessary for implementation of the plan. As a precondition for Federal assistance, the State would have to demonstrate that it has adequate safety laws and methods for implementation of those laws. An annual sum of $5,000,000 would be authorized for the administration of the program.

Mr. President, the tragic Buffalo Creek disaster which occurred in West Virginia has focused public attention on one aspect of a widespread danger to life and property. The dam which failed on February 26th was constructed out of mine refuse and was intended to impound water from a washing process at the mine. The failure apparently resulted because the structure was not properly designed for the release of excess water and because it was capable of impounding more water than the dam could safely retain.

In the aftermath of this tragedy, it has become evident that there are other similar structures, possibly equally as dangerous, existing throughout the country.

The terrible loss of life, human misery, and destruction of property which resulted from the Buffalo Creek disaster cannot be lessened by legislation, but the lesson of that disaster can provide the incentive to remedy the potential disasters which exist elsewhere.

Mine impoundments are only one of the many kinds of water control structures which pose threats to life and property. There are dams throughout the nation which have been constructed by public and private entities for all manner of purposes, many of which are of far greater size than the Buffalo Creek structures and which may pose threats of far greater disasters than did the failure at Buffalo Creek.

There are nearly 30,000 dams and reservoirs in the United States which are under state supervision. Some of these dams and reservoirs may be subject to Federal regulations under such statutes as the Coal Mine Health and Safety Act. Others are exclusively under State supervision. Unfortunately, neither situation provides for adequate regulation and inspection throughout the nation.

The safety of these impoundments should be a matter of great concern to public officials. The security of life and property below the reservoirs depends upon professionally competent design and construction supervision, and programs for regular inspection and maintenance of completed structures. Unfortunately, there is no uniformity among State laws regulating these structures.

In July of 1966, the United States Committee on Large Dams surveyed existing State law and reported that the majority of the states either had not enacted laws adequate to safeguard the public or did not fully support the laws already enacted. In 1969, the same body prepared and circulated a model State law for State supervision of safety of dams and reservoirs.

As is often the case, however, most states have small water resources staffs which are already overburdened with a variety of duties regarding water supply, water quality control, and other water resource responsibilities. If an expedited program of inspection of all non-Federal impoundments nationwide is to be carried out by the States, as it should be, the expertise and manpower of the Federal agencies which have engineering competence and which are leaders in the field of hydraulic structures must be mobilized to assist in the effort.

It is not logical to confine this effort to the type of mine spoil impoundments which failed in West Virginia. The problem is much broader than that. The problem is the lack of law and staff and monetary resources at the State level to insure the safety of water control structures of every type.

We as a Nation cannot countenance the continued threats to life and property which unsafe dams and water impoundment pose. Congress must act to provide for an expedited national program to insure dam safety.

The bill I propose today would lend needed support to the States to encourage them to attack the problem of dam safety. The vastly greater resources in technical knowledge and manpower of the Federal government would be placed at the States' disposal. The States, in turn, would be required to strengthen their safety laws and programs so as to make effective use of these Federal resources.

S. 3449

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Safety of Dams Act."

SECTION 1. The Congress, recognizing the responsibility of the Federal Government and the governments of the several States to provide for the public welfare, finds—

(a) That provisions for the licensing and inspection by the States of the construction and operation of structures for the storage and regulation of water vary widely among the several States and in a number of States are inadequate to insure the safety and welfare of the public;

(b) That even in States which do provide for State licensing and inspection of such structures, there frequently are not adequate funds, personnel, and technical ability to maintain an adequate schedule of inspection of dams and other water control structures with the frequency and detail necessary to insure their safety;

(c) That the Federal Government has accepted responsibilities for broad public protection from floods in programs for the direct Federal construction of flood control and waterway improvement works, Federal financial assistance for the construction of flood control works by others, regulation of the construction of impoundments on navigable streams, and programs of disaster relief for areas affected by floods;

(d) That the Federal water resource development agencies possess technical competence in every aspect of design, construction, operation, and safety of water storage and control structures which need not and probably cannot be duplicated at the level of State government; and

(e) That he necessity for an expedited national program to insure the safety of water storage and control structures has been recently and tragically demonstrated in the cost of lives lost and property damaged and in reports which document the lack of safety in many such structures throughout the Nation.

SEC. 2. To implement an expedited national program to insure the safety of water storage and control structures, the Secretaries of the Interior, Army, and Agriculture, acting through the Water Resources Council, are authorized and directed to develop a program of technical assistance for the support of State programs for the licensing and inspection of non-Federal dams and other water storage and control structures. The existing technical personnel and facilities of the Bureau of Reclamation and Geological Survey, the Army Corps of Engineers, and the Soil Conservation Service shall be made available as otherwise provided in this Act to implement this program.

SEC. 3. Upon the establishment of the program authorized by Sec. 2, and upon written application by the Governor of a State to the Water Resources Council (hereinafter referred to as the "Council"), the Council shall, in consultation with State officials designated by the Governor, prepare a technical assistance plan to insure the safety of water storage and control structures in the State. Federal assistance provided under the plan may include any or all of the following functions—

(a) Technical review and recommendations to the appropriate State official concerning the adequacy of the designs of water storage and control structures which are proposed for State licensing or are currently under construction;

(b) Field inspection of existing water storage and control structures and recommendations to appropriate State officials concerning the safety of such structures and remedial measures required to protect life and property from any inadequacies found therein;

(c) Technical assistance to State officials on specific problems arising from State licensing and inspection of water storage and control structures; and

(d) Technical assistance to State officials on the development of general criteria for the design, construction, operation, and maintenance of water storage and control structures.

SEC. 4. No State shall be eligible for assistance under this Act until it has shown to the satisfaction of the Council that:

(a) The State requires by law that the construction of new water storage and control structures, as defined in this Act, and the modification, enlargement, and removal of existing such structures must be approved in writing by an appropriate State agency having engineering competence;

(b) The State provides by law for the inspection by a State official having engineering competence of water storage and control structures during construction and of existing structures periodically during operation;

(c) The State by law provides authority to an appropriate State official having engineering competence to suspend construction work, to restrict operation, and to require repairs or modifications of water storage and control structures for the protection of life and property;

(d) The State provides by law or regulation a procedure acceptable to the Water Resources Council for prompt and adequate consideration of complaints to the State by citizens who are or claim to be endangered or damaged by water storage and control structures; and

(e) The Governor of the State has designated a State official with engineering competence to administer the State laws and to represent the State in cooperation with the Council pursuant to this Act.

SEC. 5. Nothing in the Act shall add to or detract from the legal responsibility of the United States for damages caused by the partial or total failure of any water storage or control structure.

SEC. 6. For the purposes of this Act—

(a) A "water storage or control structure" means any artificial barrier including appurtenant works which does or will impound or divert water and which (1) is or will be 25 feet or more in height above the natural streambed or from the lowest elevation of the base of the barrier to the maximum elevation of impounded water, or (2) has or will have a maximum impounding capacity of 50 acre-feet or more, or (3) is a conveyance work designed to pass flood flows for the purpose of protecting life or property. *Provided,* That barriers which either are less than six feet in height or have a maximum impounding capacity of less than 15 acre-feet shall be excluded: *Provided further,* That "water storage or control structure" shall not include any structure constructed, operated, or owned by the United States.

(b) A "State" includes the District of Columbia, Puerto Rico, and the Territories of Guam, American Samoa, and the Virgin Islands.

SEC. 7. The Water Resources Council is authorized to make such rules and regulations as it may deem necessary or appropriate for carrying out the provisions of this Act.

SEC. 8. There are authorized to be appropriated to the Water Resources Council not more than $5,000,000 annually for the five fiscal years beginning with the fiscal year of the date of enactment of this Act for the administration and for transfer to the agencies enumerated in section 2 of this Act to carry out the purposes of this Act.

By Mr. CRANSTON:

S. 3450. A bill to authorize continuation of programs of ACTION, create a National Advisory Council for that Agency, and for other purposes. Referred to the Committee on Labor and Public Welfare.

ACTION ACT OF 1972

Mr. CRANSTON. Mr. President, I introduce today, for appropriate reference, on the request of the administration, S. 3450, the proposed ACTION Act of 1972, a bill to authorize continuation of programs of ACTION, to create a National Advisory Council for that Agency, and for other purposes.

This draft legislation was transmitted to the President of the Senate by the Director of ACTION on March 16, 1972. Mr. President, I ask unanimous consent that this transmittal letter, together with the proposed draft bill and section-by-section analysis, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ACTION,
Washington, D.C., March 16, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I am transmitting herewith a proposed bill authorizing the continuation of programs of ACTION, creating a National Advisory Council for ACTION, and for other related purposes.

Reorganization Plan No. I of 1971 brought together in a new agency, ACTION, a number of programs which together provide a broad mix of volunteer services—Volunters in Service to America (VISTA), Retired Senior Volunteer Program (RSVP), Foster Grandparents Program, Service Corps of Retired Executive (SCORE) and Active Corps of Executives (ACE). The Peace Corps and the Office of Voluntary Action were also transferred to ACTION by Executive Order No. 11603 on July 1, 1971.

When the President submitted Reorganization Plan No. I to the Congress on March 24, 1971, he outlined in his message of transmittal additional steps which would be necessary in support of his goal of an expanded government contribution to volunteer service.

This bill would provide the Director of ACTION with sufficient authority to achieve that goal. It would modify existing legislation to take into account the effects of the creation of ACTION, to broaden the areas of endeavor in which volunteers may be employed, and to eliminate some of the differences between the treatment afforded domestic volunters and that afforded volunteers in international programs. The provisions of the bill are described in the attached section by section analysis.

Among the major provisions are—

A continuing authorization for the international and domestic activities of ACTION;

Grant-making authority for new programs to stimulate and initiate improved methods of providing volunteer services and to encourage wider volunteer participation; and

A broadening of the scope of the VISTA and Foster Grandparent Programs.

Fund" which earmarked a portion (approximately $65 to $75 million annually) of the funds collected on import duties collected pursuant to Section 32 of the Act of August 24, 1935.

The exact amounts reserved for accelerated reforestation programs on national forests were calculated under a formula which reflected the gross receipts from duties on various wood products.

H.R. 13089 also called for the Secretary of Agriculture to submit to Congress within one year of the date of enactment and annually thereafter a report containing several specified provisions.

SENATE AMENDMENTS

The Senate amendments deleted all references to "Section 32." Thus, the "Supplemental National Forest Reforestation Fund" would be financed by direct appropriations, not to exceed $65 million annually.

The Senate amendments did not change the annual report requirements.

CONFERENCE AGREEMENT

The House conferces receded from their disagreement to the Senate amendments.

In their deliberation of the provisions of this legislation, the conferees were never in disagreement over this bill's objective. The only disagreement was over the method of financing the accelerated reforestry effort.

The conferees have agreed to the conventional appropriations process contained in the Senate amendments with the clear understanding that this approach should first be tried for a reasonable period of time. Then, if the evidence indicates that the high priority need for an expanded reforestation effort in the national forests is not being met, the search for more direct financing methods will resume.

Finally, the conferees point out that this bill now proposes a specific legislative goal, the attainment of which is vital to the Nation and that it is imperative for this program to be fully funded in the future.

THOMAS S. FOLEY,
BILL D. BURLISON,
JOSEPH VIGORITO,
CHAS. M. TEAGUE,
JOHN KYL,
Managers on the Part of the House.

HERMAN E. TALMADGE,
JAMES O. EASTLAND,
B. EVERETT JORDAN,
JACK MILLER,
G. D. AIKEN,
Managers on the Part of the Senate.

TRANSMITTAL OF EXECUTIVE AGREEMENTS TO CONGRESS

Mr. ZABLOCKI. Mr. Speaker, I move to suspend the rules and pass the bill (S. 596) to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within 60 days after the execution thereof.

The Clerk read as follows:

S. 596

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 1, United States Code, is amended by inserting after section 112a the following new section:

"§ 112b. United States international agreements; transmission to Congress

"The Secretary of State shall transmit to the Congress the text of any international agreement, other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President."

SEC. 2. The analysis of chapter 2 of title 1, United States Code, is amended by inserting immediately between items 112a and 113 the following:

"112b. United States international agreements; transmission to Congress."

The SPEAKER. Is a second demanded?

Mr. FINDLEY. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. ZABLOCKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill requires the Secretary of State to send to Congress the text of any international executive agreement to which the United States is a party at least 60 days after the agreement has entered into force.

Because some of those agreements may be sensitive and must be kept secret in the national interest, S. 596 provides that those agreements would be transmitted to the Committee on Foreign Relations and to the Speaker for the Committee on Foreign Affairs where they would be held under an "appropriate injunction of secrecy" classification which could be removed only by the President.

The bill is not retroactive and, therefore, past international executive agreements would not have to be sent to Congress.

It would affect only future international agreements—which have averaged about 200 per year in recent times.

The problem which this bill seeks to remedy has been a perennial one: On past occasions Congress has not been notified or fully informed about international agreements entered into by the President or other officials of the executive branch.

For example, the provisions of the Yalta agreements were not made available to the Congress or the public until some years after the agreements had been concluded.

In more recent times, congressional investigations have disclosed contemporary examples of agreements which were withheld from Congress.

During testimony on this bill, Department of State witnesses admitted that Congress had not always been kept adequately informed about international executive agreements.

Initially, however, the State Department preferred informal arrangements for providing Congress with information about executive agreements, and opposed this legislation.

Following the passage of S. 596 by a vote of 81 to 0 in the Senate, however, the executive branch dropped its opposition to the measure. It now has no objection to the passage of this bill if the Congress believes this is the wisest way to proceed.

This proposal is not a new idea. Its history goes back to 1954 when a similar measure was introduced in the Senate by Senators Ferguson of Michigan and Knowland of California.

The Eisenhower administration had a hand in shaping the bill which was seen as an acceptable alternative to much more stringent measures affecting executive agreements which had been offered by Senator Bricker of Ohio.

Although the Ferguson-Knowland bill passed the Senate in 1956, the House failed to act because that legislation did not include reporting of executive agreements to the House of Representatives.

The bill before us today is essentially the same legislative proposal as that preferred by the Eisenhower administration with the letter provision included.

This bill does not impinge on the right of the President to conclude international executive agreements. It in no way limits the negotiating authority of the President.

S. 596 simply provides that if the President makes international agreements he must inform the Congress—or in the case of secret agreements, inform responsible committees of Congress.

It should be pointed out that executive agreements have the same effect as treaties in international law.

In other words, executive agreements bind the United States as a whole Nation—not just the President or administration which makes them.

Nor, under international law, is the duration of an executive agreement limited by the tenure of the President who entered into such agreements. It continues to be binding on the Nation—and the Congress as the national legislature—after he has left office.

If such agreements are to be binding on the Nation, then Congress must know about them. To keep them entirely secret from Congress is a distortion of our constitutional system.

Yet, that is what happened in the past and may well happen in the future unless S. 596 is enacted into law.

Therefore, I urge that this body vote to suspend the rules and approve S. 596.

Mr. MONAGAN. Mr. Speaker, will the gentleman yield?

Mr. ZABLOCKI. I am glad to yield to the gentleman.

Mr. MONAGAN. I want to say to the gentleman from Wisconsin that I support this legislation. I also compliment him for his work and that of his subcommittee in bringing it before the House for consideration.

Last week we touched upon this subject in connection with the foreign aid bill. At that time I moved to remove from the bill the projected suspension of aid to Portugal based on the condition that the agreement in that case had not been reported to the Congress.

I do want, however, to emphasize that I support this bill and support the general principle of free disclosure of executive actions. In the circumstances of last week, of course, and the question of assistance to Portugal, that transaction had already taken place and the agree-

Mr. Giamo with Mr. Dellenback.
Mr. Reid with Mr. Fish.
Mr. Ryan with Mr. Brown of Michigan.
Mr. Murphy of New York with Mr. Lent.
Mr. Madden with Mr. McDonald of Michigan.
Mr. Thompson of New Jersey with Mr. Frelinghuysen.
Mr. Waldie with Mr. Goldwater.
Mr. Lennon with Mr. Ashbrook.
Mr. Blanton with Mr. Baker.
Mr. Vigorito with Mr. Halpern.
Mr. Wright with Mr. Betts.
Mr. Slack with Mr. Davis of Wisconsin.
Mrs. Abzug with Mr. Dellums.
Mr. Cotter with Mr. Kuykendall.
Mr. Landrum with Mr. Blackburn.
Mr. Alexander with Mr. Frey.
Mr. Mollohan with Mrs. Chisholm.
Mr. Diggs with Mr. Pepper.
Mr. Metcalfe with Mr. McCormick.
Mr. Leggett with Mr. McKinney.
Mr. Hagan with Mr. Carter.
Mr. Passman with Mr. Edwards of Alabama.
Mr. Rarick with Mr. Keith.
Mr. McMillan with Mr. Dennis.
Mr. Edmondson with Mr. Clancy.
Mr. Gallagher with Mrs. Dwyer.
Mr. Long of Louisiana with Mr. Crane.
Mr. Price of Texas with Mr. Lloyd.
Mr. Quillen with Mr. Michel.
Mr. Ruppe with Mr. Mills of Maryland.
Mr. Smith of California with Mr. Minshall.
Mr. Pelly with Mr. O'Konski.
Mr. Dowdy with Mr. Schmitz.
Mr. Wiggins with Mr. Wylie.

Messrs. KOCH, HECHLER, of West Virginia, and SCHEUER changed their votes from "yea" to "nay."

Mr. RONCALIO changed his vote from "nay" to "yea."

The result of the vote was announced as above recorded.

The title was amended so as to read: "An act concerning the war powers of the Congress and the President."

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a bill and concurrent resolutions of the House of the following titles:

H.R. 2131. An act for the relief of the Howrey Lumber Co.;

H. Con. Res. 560. Concurrent resolution providing for the printing of the report entitled "Housing and the Urban Environment, Report and Recommendations of Three Study Panels of the Subcommittee on Housing"; and

H. Con. Res. 605. Concurrent resolution to authorize the printing as a House document the pamphlet entitled "Our Flag", and to provide for additional copies.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill and a concurrent resolution of the House of the following titles:

H.R. 12207. An act to authorize a program for the development of tuna and other latent fisheries resources in the Central and Western Pacific Ocean; and

H. Con. Res. 550. Concurrent resolution providing for the installation of security apparatus for the protection of the Capitol complex.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13039) entitled "An act to provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments ow the Senate to the bill (H.R. 15417) entitled "An act making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1973, and for other purposes."

The message also announced that the Senate agreed to the House amendments to Senate amendments numbered 19, 24, 51, 52, 54, 66, and 76 to the foregoing bill.

The message also announced that the Senate agrecs to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15586) entitled "An act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1973, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15692) entitled "An act to amend the Small Business Act to reduce the interest rate on Small Business Administration disaster loans."

The message also announced that the Vice President, pursuant to Public Law 77-250, appointed Mr. STENNIS as a member of the Joint Committee on Reduction of Federal Expenditures vice Mr. Ellender, deceased.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 2166. An act to authorize the establishment of the Grant-Kohrs Ranch National Historic Site in the State of Montana, and for other purposes;

S. 3240. An act to amend the Transportation Act of 1940, as amended, to facilitate the payment of transportation charges;

S. 3307. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended, and for other purposes; and

S. 3755. An act to amend the Airport and Airway Development Act of 1970, as amended, to increase the U.S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes.

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

CORRECTION OF ROLLCALL

Mr. YATRON. Mr. Speaker, on rollcall No. 313, on Thursday, August 10, a quorum call, I am recorded as absent. I was present and answered to my name. I ask unanimous consent that the permanent RECORD and Journal be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

CONFERENCE REPORT ON H.R. 13089, PLANTING OF TREES ON NATIONAL FOREST LANDS

Mr. FOLEY submitted the following conference report and statement on the bill (H.R. 13089) to provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 92-1334)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13089) to provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: That the House recede from its disagreement to the amendments of the Senate and agree to the same.

THOMAS S. FOLEY,
BILL D. BURLISON,
JOSEPH VIGORITO,
CHAS. M. TEAGUE,
JOHN KYL,
Managers on the Part of the House.

HERMAN E. TALMADGE,
JAMES O. EASTLAND,
B. EVERETT JORDAN,
JACK MILLER,
G. D. AIKEN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13089) to provide for acceleration of programs for the planting of trees on national forest lands in need of reforestation, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

HOUSE BILL

H.R. 13089, as passed by the House on May 3, 1972, was designed to establish a "Supplemental National Forest Reforestation

ment between the countries was in effect. Any revocation of it would have been ex post facto.

Mr. Speaker, I wholeheartedly support this legislation.

Mr. ZABLOCKI. I thank the gentleman for his contribution.

This is a most orderly procedure for receiving executive agreements.

Mr. FINDLEY. Mr. Speaker, in addition to the comments made by the gentleman from Wisconsin (Mr. ZABLOCKI), with which I completely concur, I would like to add this comment: Some concern was expressed that there might be executive agreements which should not be publicly known, that there might be a period in which it would be in the national interest for a level of secrecy to be maintained. The enactment of S. 596 would not impede such a procedure. The Committee on Foreign Affairs on many occasions has received documents under the very highest classification, and these have been adequately protected, the contents have been noted by proper officers of the committee, the chairman and the ranking minority members. But nevertheless the information in all executive agreements in my view should be made available promptly to the Congress whether the contents must be under classification or not.

So, Mr. Speaker, I consider that this bill, like the war powers bill we just handled, represents a very significant step forward in establishing proper relationships between the executive and legislative branches of the Government.

(Mr. FINDLEY asked and was given permission to revise and extend his remarks.)

Mr. FINDLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Iowa (Mr. GROSS).

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Speaker, earlier this year the House renewed the infamous International Coffee Agreement, which the Members will recall establishes a cartel in London to fix the prices of coffee. Recently the price of coffee, ground coffee, was increased approximately by 12 cents a pound, and the price of instant coffee was increased by 1 cent an ounce, or 16 cents a pound.

My question to the chairman of the subcommittee who has the bill on the floor is whether this legislation to deal with executive agreements could possibly affect in any way this international coffee agreement that is about to cost the coffee consumers of the United States a tremendous increase in the amount of money spent for coffee?

Mr. ZABLOCKI. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I will be glad to yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. Mr. Speaker, as I have stated in my remarks, the provisions of this bill would not be retroactive, so any agreements that have been entered into in the past would not necessarily be reported to the Congress. However, agreements, such as coffee agreements, if there are any in the future, such agreements would have to be sent to the Congress.

Mr. COLLIER. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from Illinois.

Mr. COLLIER. Mr. Speaker, I just might interject this: That the extension of the coffee agreement pact did germinate in the House Committee on Ways and Means, as the gentleman knows, and had it not then been extended it would have expired this year.

However, the committee voted 24 to 1 to extend what I think is merely a foreign aid bill which the housewives of America pay for in marketplace.

Mr. GROSS. I thank the gentleman from Illinois for his contribution, and I am left to wonder how it was possible to get 24 votes in the Committee on Ways and Means to extend the infamous International Coffee Agreement.

Mr. FINDLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. WHALEN).

(Mr. WHALEN asked and was given permission to revise and extend his remarks.)

Mr. WHALEN. Mr. Speaker, I rise to join the distinguished gentleman from Wisconsin (Mr. ZABLOCKI) in urging the passage of S. 596. He and I have sponsored in the House measures which are identical to S. 596.

Mr. Speaker, a free people must have access to the decisions of their governernment if they are to remain free. As representatives of a free people, we in Congress have a responsibility to keep apprised of governmental matters in even greater detail than our constituents Unfortunately, however, in the area of international agreements, it is often difficult for Congress to be fully informed. This is so because the executive branch, under both Republican and Democratic administrations, has taken the position that it can withhold from regular dissemination to Congress—even on a classified basis—those documents which it deems sensitive in view of security considerations.

In recent years, the number and the subject matter of these secret agreements make it imperative that Congress be aware of their existence. Many of these commitments affect our survival and defense in the most fundamental sense. Certainly, in this age of instant communication and military deployment abroad, agreements which could involve the United States in hostilities must be known to the Congress before, not after, they have triggered events. Thus, the purpose of the legislation we are considering today is to reenforce the right of Congress to know the terms of all of this country's commitments.

This proposal also recognizes that it might not be in the Nation's interest for some agreements to be disclosed publicly. For that reason, the bill stipulates that agreements which the Executive wishes to remain classified would be transmitted not to the Congress at large but to the House Foreign Affairs and Senate Foreign Relations Committees. These committees are charged with the responsibility of being Congress' focal point in the international field. Without complete information, neither the committees nor the entire Congress can discharge their duties properly.

In closing, I would like to note the contribution made in this area by our former colleague, the present Under Secretary General for Political and General Assembly Affairs, Brad Morse. Brad was the sponsor of the first bill introduced in the House on this subject in the 92d Congress. I am sure that he is greatly pleased that the effort he commenced has resulted in our consideration of S. 596 this afternoon.

Mr. Speaker, I also commend the chairman of the House Foreign Affairs Subcommittee on National Security Policy and Scientific Developments (Mr. ZABLOCKI) for bringing this bill before the House, and I urge that S. 596 be passed.

Mr. FINDLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. COLLIER).

Mr. COLLIER. Mr. Speaker, at the outset I want to add my compliments to the subcommittee for reporting this bill. I think it is indeed a real step in the right direction of providing the means by which the Congress can remain informed in the area of international agreements.

Might I add further, it would be my hope and desire that this Congress will now deal with an even more important matter and that is the matter of international treaties.

For several years, I know that many of my colleagues in the House have felt a great need to review a host of international treaties, some of which are obsolete and some of which certainly are outmoded by reason of the change in events since the time in which they were entered.

Today, for example, I believe we are all aware of the fact that we are committed to the common defense of some 41 nations in the world by reason of some seven international treaties, some of which, as I said before, are obsolete.

While it is not the constitutional function or jurisdiction of this House to deal in the area of international treaties which are ratified, of course, only by the Senate.

The fact of the matter is that this Congress could move on a resolution which I introduced calling for a constitutional amendment that in sum and substance would provide that wherever this country is committed by an international treaty to the commitment of U.S. forces abroad, that not only the Senate of the United States provide ratification of such treaties. I am convinced that where the commitment of military forces is involved that we should amend the Constitution so that this body whose Members are closer to the constituency they represent that those in the other body should also ratify those treaties.

I do not want to encroach upon the longstanding constitutional powers of the Senate, but I think in this area, we should have not only a right but a responsibility to participate in the ratifica-

tion process. I would hope that now that we have made this step forward, we will move on to considering that resolution. I think most of the people in this country would support this concept, and which I am sure it would be expeditiously ratified by the required number of States.

Mr. FINDLEY. Mr. Speaker, in response to the comments of the gentleman from Illinois (Mr. COLLIER), it was not too many years ago that this body adopted by a very heavy margin a constitutional amendment to provide that all treaties henceforth must be ratified by the House as well as the Senate. But, unfortunately, it got nowhere in the other body.

The proposal that the gentleman now makes may have the same fate, but I must say I am intrigued by the idea. I have not heard of a specific proposal of this sort before and I express the hope that our subcommittee may give it consideration.

Mr. Speaker, I strongly support passage by the House of S. 596. This legislation would require that international agreements other than treaties entered into by the United States be transmitted to the Congress within 60 days after execution of the agreement. Where necessary of course the documents could be classified.

I consider this legislation a meaningful step toward developing a better working relationship between the Congress and the executive branch in the area of of a formal procedure, by law, for the transmittal of executive agreements, we can eliminate a potential source of friction between the executive branch and the Congress.

I should emphasize that this legislation is not new. A similar proposal was introduced in 1954 by Senators Knowland of California and Ferguson of Michigan. The Senate adopted the measure unanimously in 1956, but no action was taken in the House.

Also, I would like to point out that through this legislation we are not questioning the right of the President to conclude executive agreements. However, executive agreements bind the United States as a nation, not just the President or his administration, under international law. And the agreement continues to be binding after the President has left office.

Clearly the Congress has the right to know about all international executive agreements. Passage of S. 596 will help to assure that the Congress will be kept informed.

Mr. ZABLOCKI. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Speaker, I commend the gentleman from Wisconsin (Mr. ZABLOCKI) as chairman of the subcommittee and the Subcommittee on National Security Policy for bringing this legislation to the floor.

Mr. Speaker, this is very important legislation, one of a series of steps designed to assure that this body and the entire Congress will have a voice in matters that are of great concern to the people of this country. I am pleased to join in support of S. 596 to require that international agreements other than treaties, be transmitted to the Congress within 60 days after the execution thereof.

The Congress must exercise a strong role in foreign policy. Failure to do so only encourages a disproportionate role for the executive branch, and adversely effects the balance between the executive and legislative branches necessary for effective formulation and execution of foreign policy.

The Vietnam war has led to a steady increase of congressional concern and action in this arena. We have seen the constitutional authority of the Congress to declare war steadily eroded. But legislation passed by the House and before us again today reaffirms that authority and clearly lets the executive branch know that we shall exercise our full responsibility and authority in the future.

In order for the Congress to exercise the role I feel we should, we must be fully informed of all international agreements to which the United States is a party. This should certainly include executive agreements, entered into by the President. Executive agreements have the same effect as treaties in international law. They bind the United States as a whole nation, no less than do treaties. Similarly, under international law, the duration of an executive agreement is not limited by the tenure of the President who concluded it, but is binding on the Nation until similar formal action suspends the agreement.

Executive agreements are an integral and important aspect of our foreign policy. The Congress has the need to know, and the power under the Constitution to require the disclosure of, the texts of all international executive agreements, and should require such disclosure by law.

The bill before us does not question in any way the right of the President to negotiate and conclude executive agreements, nor does it transgress on the independent authority of the Executive in the area of foreign affairs.

Similarly, the bill leaves to the discretion of the President which agreements shall be made public when transmitted to the Congress and which shall be kept secret and transmitted only to the Senate Foreign Relations Committee and the House Foreign Affairs Committee. It gives the President the sole authority to declassify agreements, and precludes such action by the congressional committees and by Members of Congress.

The legislation before us today does establish, in law, a formal procedure for transmittal to Congress of all executive agreements. It is an important step toward restoring a proper working relationship between the Congress and the executive branch, and I strongly urge its adoption.

Mr. Speaker, I have applauded the President's decision to submit to both the House of Representatives and the Senate the Interim Agreement on Strategic Offensive Weapons which he signed in Moscow last May. Such action, however, should not be an exception but should be the rule. Favorable action today would accomplish that objective.

(Mr. FASCELL asked and was given permission to revise and extend his remarks.)

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. ZABLOCKI. Mr. Speaker, I have no further requests for time.

The SPEAKER. The question is on the motion offered by the gentleman from Wisconsin (Mr. ZABLOCKI) that the House suspend the rules and pass the bill, S. 596.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid upon the table.

INTERNATIONAL BRIDGES CONSTRUCTION

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 15577) to give the consent of Congress to the construction of certain international bridges, and for other purposes.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Bridge Act of 1972".

SEC. 2. The consent of Congress is hereby granted to the construction, maintenance, and operation of any bridge and approaches thereto, which will connect the United States with any foreign country (hereinafter in this Act referred to as an "international bridge") and to the collection of tolls for its use, so far as the United States has jurisdiction. Such consent shall be subject to (1) the approval of the proper authorities in the foreign country concerned; (2) the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters", approved March 23, 1906 (33 U.S.C. 491–498), except section 6 (33 U.S.C. 496), whether or not such bridge is to be built across or over any of the navigable waters of the United States; and (3) the provisions of this Act.

SEC. 3. The consent of Congress is hereby granted for a State or a subdivision or instrumentality there of to enter into agreements—

(1) with the Government of Canada, a Canadian Province, or a subdivision or instrumentality of either, in the case of a bridge connecting the United States and Canada, or

(2) with the Government of Mexico, a Mexican State, or a subdivision or instrumentality of either, in the case of a bridge connecting the United States and Mexico,

for the construction, operation, and maintenance of such bridge in accordance with the applicable provisions of this Act. The effectiveness of such agreement shall be conditioned on its approval by the Secretary of State.

SEC. 4. No bridge may be constructed, maintained, and operated as provided in section 2 unless the President has given his approval thereto. In the course of determining

I have reasonable cause to believe that the above employer and union are within the jurisdiction of the Equal Employment Opportunity Commission and have violated and continue to violate Section 703 (a) (c) and (d) of the Civil Rights Act of 1964 by discriminating against Negroes and females on the basis of race and sex with respect to recruitment, hiring, job assignment, promotion, training, compensation, representation and other terms and conditions of employment:

1. Respondent employer discriminatorily refuses or fails to recruit and hire Negroes and females in the same manner it recruits and hires Caucasians and males.

a. The company employs a total of 2207 employees. Of these, 285 (12.9%) are Negroes. The population of Columbia is estimated to be 40% Negro.

b. The company employs 339 (15.4%) females.

2. Respondent employer discriminatorily places Negroes and females in lower paying and traditionally relegated jobs.

a. Of 1080 blue collar jobs, Negroes hold 248 (24.1%). Of 1,157 white collar jobs, Negroes hold 17 (1.5%). All three laborers and twenty service workers are black.

b. Of 537 clerical and office workers, 310 (57.7%) are females. There is only 1 female in the blue collar category.

3. Respondent employer discriminatorily excludes and/or restricts Negroes from higher-paying positions and/or jobs above the blue collar level.

4. Respondent employer discriminatorily excludes and/or restricts females from higher-paying positions and/or jobs above the office and clerical level.

5. Respondent employer discriminatorily limits and restricts Negroes and females to certain job categories.

6. Respondent employer discriminatorily maintains segregated departments according to race and sex.

7. Respondent employer discriminatorily fails to provide Negroes and females with equal training opportunities.

8. Respondent employer discriminatorily fails to provide Negroes and females with equal job opportunities and promotions afforded other employees.

9. Respondent union discriminatorily fails to represent Negroes and females on the same basis as Caucasian males.

10. Respondent employer and union have further discriminated against Negroes and females in all policies and practices, like, related to, or growing out of the specific practices enumerated above.

The class aggrieved includes, but is not limited to all persons who have been and continue to be or might be or might be adversely affected by the unlawful practices complained of herein.

———, *Commissioner.*

Mr. HOLLINGS. Mr. President, this letter and memorandum will indicate some of the harassment which has taken place and which, of course, I do not condone.

Since the second session of this Congress convened on January 18, the overwhelming majority of the Senate's time has been occupied with the consideration of the equal employment opportunity bill.

It is the type of harassment described by Mr. WILLIAMS which has alarmed me and caused me to oppose the Commission's having judicial powers. Accordingly, I have consistently supported amendments to the bill which would deny to the Commission a broad, blank check of judicial power. Allowed the free rein of the original bill, the Commission would have become a champertous and surreptitious volunteer. Approval of the Dominick amendment, in my view, has given the Commission a reasonable and effective means of carrying out their mission: presenting their findings to an impartial, judicial tribunal.

Mr. President, I must now act in good faith by voting for final passage. I cannot deny the fact that the Equal Employment Opportunity Commission to date has been ineffective in protecting equal opportunities. I cannot deny that the Commission's authority must be beefed up, and I cannot deny that equal job opportunities for our minorities must be guaranteed. The bill now carries this guarantee with it. Accordingly, it is now time for the Senate to approve the legislation.

QUORUM CALL

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CASE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSMITTAL TO CONGRESS OF INTERNATIONAL TREATIES

The Senate resumed the consideration of the bill (S. 596) to require that international agreements other than treaties, hereafter entered into by the United States, be transmitted to the Congress within 60 days after the execution thereof.

Mr. CASE. Mr. President, I understand the pending business is my bill S. 596.

The PRESIDING OFFICER. The Senator is correct.

UNANIMOUS-CONSENT AGREEMENT

Mr. CASE. Mr. President, I ask unanimous consent that we may have a time limitation on this measure with a final vote to occur at 3:45 p.m. today, the time to be equally divided between the proposer of the measure and the majority leader or his designee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CASE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 5 minutes.

Mr. CASE. Mr. President, I had forgotten we have this new loudspeaker gadget. My colleague, the Senator from West Virginia, was very kind to suggest that we put it into operation and I hereby do so.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CASE. Mr. President, under the terms of the bill which I have introduced, all international agreements entered into by this Government will henceforth be transmitted to the Congress within 60 days of their execution. Sensitive agreements will be transmitted to the Senate Foreign Relations and House Foreign Affairs Committees under an appropriate injunction of secrecy.

THE FOCUS OF THE BILL

No problem presently exists with the transmittal of unclassified international agreements to the Congress. Under existing statute—section 112a, title I. U.S. Code—the Secretary of State presently compiles and publishes all international agreements other than treaties concluded by the United States during each calendar year.

Although the provision of this statute on its face is all-inclusive, the position of the executive branch has been to withhold from regular dissemination to Congress—even on a classified basis—those documents which it deems sensitive in view of security considerations.

My bill is designed to end such an exception to the principle that Congress has the right to know the terms of all this country's commitments.

THE EXTENT OF THE PROBLEM

The Constitution contains no explicit provision authorizing the President to enter into executive agreements. They began under George Washington and during this century have increased at a rate which has paralleled our progressive involvement in world affairs. In numbers, executive agreements—which do not require the advice and consent of the Congress—have come to far exceed treaties, which do require congressional approval.

During the year 1930, 25 treaties and only nine executive agreements were entered into by the United States. By 1968, this ratio had been overwhelming reversed, with the record reflecting more than 200 executive agreements in comparison with only 16 treaties. As of January 1, 1969, according to the State Department, the United States was party to 909 treaties still in force; the number of publicly disclosed executive agreements in force totaled 3,973.

Although the equivalent number of secret agreements entered into by the executive is not a matter of public record, enough is known to establish the key role they have played at critical junctures in this Nation's history.

At the turn of the century, in an example cited by the distinguished historian, Prof. Ruhl J. Bartlett, President Theodore Roosevelt, through the Taft-Katsura agreement of 1905, agreed to Japanese hegemony over Korea in return for Japan's accession to U.S. control over the Philippine Islands. In 1917, according to Professor Bartlett, the Lansing-Ishii Agreement went so far as to include a secret protocol which nullified the very agreement to which is was attached.

In 1943, the understandings reached at the Cairo Conference were made public, but the provisions of the Yalta Agreement which altered the Cairo compact were not publicly disclosed for 3 years. And the Yalta Agreement in its entirety was not published until 1947.

More recently, the Symington Subcommittee on National Commitments uncovered contemporary examples of secret agreements entered into without reference to the Congress: with Ethiopia in

President Employee Relations will make recommendations to the department heads concerned as to how any necessary re-distribution can be accomplished with minimum adverse effect on efficiency and morale.

The Employee Relations Department will devise whatever special communications program is necessary to encourage greater numbers of minority group and female employees or potential employees to undertake the education or training essential to Category 2 jobs. Recruiting sources which are likely to refer qualified minority group or female applicants will be more greatly utilized. Only job related qualifications will be required for such positions. A program of continuing education coupled with financial incentives for participation therein will be maintained as long as it is needed.

The Employee Relations Department will attempt to discover the specific reasons for low minority group and female interest in Category 3 jobs. Any misunderstandings revealed will be removed by careful explanation.

To the extent that the Company fill Category 4 jobs from without its own organization, it will make greater use of recruiting sources which are likely to refer qualified minority group members or women. It is recognized that within the Company many minority group members and women may not appear to be motivated toward advancement becauee of the mistaken belief that they will be held back because of their minority status or sex. The Company will undertake to seek out those of such employees who may be qualified except for motivation, and consider them for Category 4 jobs and for those positions which are prerequisite to Category 4 jobs.

COMMUNICATION OF POLICY

The Company's policy of equal employment opportunity will be communicated to all employees by appropriate means. The Company will propose the addition of a non-discrimination clause to any collective bargaining agreements which do not contain such language. All notices and posters relating to the fair employment practice laws will be prominently displayed.

The public will be informed of the Company's policy on equal employment opportunity, with particular notice to those organizations which are most likely to refer for employment qualified minority group members or women. Other employers with whom the Company does business will be given particular notice of this policy, and sub-contractors will be made aware of any obligations which they may have under the Executive Order.

AFFIRMATIVE ACTION FILE

The Employee Relations Department will maintain a separate file which will contain copies of all reports, memoranda, and correspondence relating to action under this Plan, including copies of Form EEO–1, copies of communications of this policy to internal and external groups, reports of up-grading and distribution of minority group members and women, the details of recruiting efforts directed at increasing the number of qualified minority group and female applicants, and information relating to adjustment of selection standards to increase employment opportunity to all citizens.

INTERNAL REPORTING

As often as necessary, but not less than annually, the Vice President Employee Relations will report to the Executive Committee on progress in Affirmative Action. He will be prepared to explain and suggest remedies for any failure to achieve the objective of the Plan.

ARTHUR M. WILLIAMS, Jr.,
President.

ATLANTA DISTRICT OFFICE, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Atlanta, Ga., January 26, 1972.

Re TAT2–0748.

Mr. H. W. WALDON,
Vice President, Employee Relations, South Carolina Electric & Gas Co., Columbia, S.C.

DEAR MR. WALDON: As we agreed during our telephone conversation on Friday (1/21/72), I am taking this opportunity to serve you with a copy of the above captioned charge by mail. Kindly acknowledge receipt by completing the enclosed form entitled "Acknowledgment of Service" and return same to me at this office in the enclosed self-addressed return envolope.

In an attempt to move expeditiously in this proceeding, I am enclosing a complete outline of information and/or documentation that I will need to review initially. Please develop this material immediately and forward it to me in Atlanta. As I suggested to you during our conversation, it is hoped that review of the materials requested will allow us to determine a course of on-site investigation.

Please know that I am at your service and if you have further questions regarding this matter do not hesitate to call me in Atlanta at (404) 526–6068.

I remain,

Sincerely yours,

H. A. HUGGINS,
Equal Employment Officer.

OUTLINE OF INFORMATION AND DOCUMENTATION

GENERAL

1. List of all employees of the Company since January 1, 1969. This list should reflect specifically the following about each:
a. Name and address.
b. Race and sex.
c. Date of hire.
d. Initial job to which hired.
e. Initial salary or rate of pay.
f. Initial department to which assigned.
g. All subsequent personnel changes such as promotion, transfer, demotions, pay raises*, discharges, rehires and reprimands (in each change please indicate "from" and "to").

2. Complete organizational chart of the Company showing staff, departments and sub-departmental work units and number if used.

RECRUITMENT

1. Written policy on recruitment.
2. Name, position title, race of each member constituting a recruitment team.
3. Sources of all recruitments.
4. Name and description of each position recruited for.
5. Name of all persons employed through the recruitment program since January 1, 1969 reflect the race and sex of each and the specific position for which recruited.

HIRING AND PLACEMENT

1. Written policy on hiring and placement.
2. Title and description of all jobs and position used by the Company since January 1, 1969.
3. Indicate the pass of promotability and/or seniority lines of progression for each job and position listed in response to item No. 2.
4. Name and title of all job vacancies within the Company since January 1, 1969.
5. Copy of the applications for employment for all persons hired since January 1, 1969.
6. Copy of the applications for employment for all applicants rejected and the reason for rejection since January 1, 1969.
7. Copy of each testing instrument used and accompanying validation studies.
8. Copies all test and results administered to the applicants listed in response to items 5 and 6.

PROMOTION AND TRANSFER

1. Copy of Company's written policy on promotion and transfer.
2. Copies of all seniority list used to determine promotability or other employee status changes.
3. Copies of all bids placed for employee status changes such as promotions, transfers, etc. This information should reflect the reason(s) for rejection in each case when the bidder was rejected.
4. Copy of the work history record for each employee promoted or rejected for promotion since January 1, 1969.

TRAINING

1. Name, race, sex, religion, job title of all persons assigned to and received the benefit of a Company administered training program since January 1, 1969. This information should include the following:
a. Job for which trained.
b. Criteria by which selected.
c. Evaluated results of training for each person participating.
d. Copy of the work history record for each.
2. Name and description of all training programs used by the company January 1, 1969. Please state the requirements for each.
3. The same information requested in item No. 1 for persons requesting training who were denied.

TERMS AND CONDITIONS

1. Copy of Company rules and regulations setting down the terms and conditions of employment.
2. Company policies on the following:
a. Overtime.
b. Sick Leave.
c. Annual Leave.
d. Leave of Absence.
e. Maternity Leave.
3. Description of Company's disciplinary system and how it is administered.

LAYOFF, RETENTION AND RECALL

1. Name, race, sex and seniority of all persons subjected to layoff since January 1, 1969 reflecting the following:
a. Date of layoff.
b. Date of Recall.
c. Reason for Layoff.
2. Complete description of the Company's policy on layoff and recall.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION VS. SOUTH CAROLINA ELECTRIC & GAS COMPANY

Re: Charge No(s) TAT2–0748

ACKNOWLEDGEMENT OF SERVICE

The undersigned hereby certifies that on ———, 1972, he was served by Certified Mail a copy of the foregoing Charge alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964.

This ——— day of ———, 1972.

———, ———,

———, ———.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C.

COMMISSIONER'S CHARGE: TAT2–0748

Pursuant to Title VII of the Civil Rights Act of 1964, I charge the following employer and union with unlawful employment practices:

South Carolina Electric and Gas Company, 328 Main Street, Columbia, South Carolina, and IBEW Local 772, Columbia, South Carolina.

* Bonuses.

1960; Loas, 1963; Thailand, 1964; South Korea, 1966; Thailand, 1967; and the secret annexes to the Spanish Bases Agreement of 1953.

In the case of the Ethiopian agreement, the executive's pledge to equip the Ethiopian Army—at a cost of $147 million through 1970—and commit U.S. resources to the maintenance of Ethiopia's territorial integrity, had the clear potential of involving this country in the almost continuous civil war and border disputes of this section of Africa. This agreement, concluded in 1960, was transmitted to the Senate Foreign Relations Committee on May 18, 1970—and this occurred only after the Symington subcommittee had learned of the commitment.

Unlike the other agreements uncovered through the independent efforts of this subcommittee, notably those concerning Laos and Thailand, the Ethiopian commitment did not embroil the United States in yet another open-ended conflict.

But it could have.

These and other similar international agreements—those we know of and those whose existence are still unknown to the Congress—affect our survival and defense in the most fundamental sense. They go to the heart of our foreign policy.

In this age of instant communications and U.S. military deployment abroad in the eye of potential conflict, these agreements, which can in an instant commit or involve this country in possible hostilities, must be formally and systematically examined by the Congress before they are triggered by events.

Failing such prior examination, the U.S. Congress—as increasingly has been the case since World War II—is reduced to postmortem review of accomplished facts.

THE EXECUTIVE BRANCH'S PROPOSAL

Both the existence of this problem of congressional access to those agreements and the need for new procedures is admitted to by the executive branch itself.

During hearings on my bill on October 21, 1971, Mr. John R. Stevenson, legal adviser to the State Department, confirmed this point on several occasions:

In certain instances in the past they (the Congress) have not been informed on a current basis but only ad hoc some years later.

. . . we recognize there is a problem here. I think the problem that has been most pinpointed is the fact that the information hasn't been obtained until a number of years after the event.

It seems to me that a systematic procedure is required for keeping Congress informed.

There is a problem which you referred to of having the Congress informed on a more current basis.

Nonetheless, although conceding that Congress has not been fully informed, the State Department, in its official response, declared itself "firmly of the opinion that legislation on this subject would be undesirable."

Instead, the State Department recommended that the Department of State and the committees concerned "meet to work out mutually acceptable practical arrangements."

As further defined by the State Department during the course of hearings, however, these "practical arrangements" would preserve in every important aspect the executive's present ability to withhold or disclose at will the terms of these agreements. For Congress to accede even informally to these practices would be to acknowledge the subordination of Congress to the executive branch. In effect, it would legitimatize what, in fact, has been an unconstitutional assumption of power by that branch:

The executive would reserve to itself the decision as to whether Congress should be even told of an agreement. Mr. Stevenson, State Department Legal Adviser: "I cannot tell you right now that there wouldn't be some reservation of Presidential discretion of the President's ultimate power to decide what he wanted to do in a particular case."

The executive would determine how Congress would be informed, and in some instances even presumably dictate whether the full committee membership should have the information or whether it should go to certain selected members only. Mr. Stevenson: "In some cases there would be a briefing with respect to the subject matter of the agreement. In other cases the agreement could be shown to several interested members of the committee but not permanently retained by the committee."

The executive would decide which sections of an agreement Congress could know about, and certain categories of information would be completely excluded. Mr. Stevenson: "If in briefing you got the substance of what was involved, that would not necessarily mean that you had to have detailed annexes which might have vital military significance but very little foreign affairs significance."

WHY LEGISLATION IS NECESSARY

In 1954, the Eisenhower administration, in a letter from then-Assistant Secretary of State Thruston B. Morton to the Senate Foreign Relations Committee, said:

The Department would be glad to supply the Senate copies of all such (international) agreements.

There were no quibbles, no exceptions to the principle that the Senate should receive all international agreements in their full and original text. Indeed, the State Department cooperated in drawing up the language which is in my bill regarding the handling of classified agreements, and legislation similar to mine, except that it did not provide for the transmittal of agreements to the House of Representatives, subsequently passed the Senate in 1956.

In explaining why this legislation, once agreed to by the Eisenhower administration, is now being opposed by the present administration, the State Department response was:

I think this administration, reviewing the problem in the context of the on-going discussions we have had with this committee, feels that the respective interests of the President and Congress could be better reconciled without having quite *the rigidity* that this bill proposes. (Emphasis added)

In my view, the lessons of the years since 1956, let alone the relations between the State Department and the Senate Foreign Relations Committee, have shown us that this "rigidity"—which I interpret to mean strict accountability by the executive branch—is essential to the task of restoring the people's confidence in their government.

If any reminder is necessary of these lessons we have learned so painfully in the intervening years since this legislation was last considered, it was provided in a recent editorial in a major eastern newspaper:

If the dreary story of our involvement in the Vietnam war demonstrates anything, it is that the Executive Branch does not necessarily know best; it is that an uninformed Congress will make uninformed decisions or none at all; it is that secrecy breeds distrust and that neither Congress nor the public can be expected to support policies unless they have the basic data upon which to make their judgments.

We know the consequences of unchecked executive power.

How, then, can we accede to a continuation of this practice of selective disclosure to the Congress of this Nation's commitments?

For it is not enough that Congress be "told about" or "be made aware" that the executive has entered into a new agreement stationing U.S. forces abroad or extending U.S. assistance in return for some political concession. Rather, it must be possible that Congress can participate and offer an independent judgment on these policy decisions.

To fulfill this role, Congress must be able to inform itself with precision of the terms of all international agreements. And this is not possible unless, in the case of sensitive agreements, the designated committees of Congress have the opportunity to study and weigh the exact language of every document in its entirety.

Even apart from the question of exact language which commits this country to a course of action, there should be no "a prior" judgment as to which annex or which section may or may not be of concern to the Congress.

As previously noted, the State Department witness in testifying on my bill asserted that Congress did not "have to have detailed annexes which might have vital military significance but very little foreign affairs significance."

How an agreement can be of "vital military significance" and not affect foreign policy, I do not know.

But I am aware of a chilling example of how crucially significant to the future of this country such an "annex" can be.

In the transcript of the White House meetings surrounding the India-Pakistan war released by Columnist Jack Anderson on January 4, Presidential Adviser Henry Kissinger was quoted as saying:

When I visited Pakistan in January 1962, I was briefed on a secret document or oral understanding about contingencies arising in other than the SEATO context. Perhaps it was a Presidential letter. This was a special interpretation of the March 1959 bilateral agreement.

Whether in fact such a "special interpretation" existed which could have directly involved the United States in the India-Pakistan war, this is an example of how an annex of mere "military" significance, although perhaps concluded in a time of relative tran-

quillity when its application seemed remote, can have an overriding importance to this country's foreign policy.

Selecting disclosure in any of its forms is unacceptable.

This bill, in the terms used by the executive branch in opposing it, is "rigid." It offers no loopholes. Every international agreement entered into by the United States would be formally transmitted to the Congress in its full and original text. And, as made clear in the Senate Foreign Relations Committee report accompanying the bill, the intent is clear that the executive should make available to the Congress all such agreements now in force.

This bill does not represent an attack upon the executive branch. Instead, it is designed to restore the constitutional role of Congress in the making of this country's foreign policy.

In the words of former Justice Jackson of the Supreme Court, redressing this balance is the responsibility of Congress itself:

With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.

Mr. President, this bill is a matter that has been before the Senate before and it has been approved by the Senate before. In substance, it is the same as an amendment which our former leader, Senator Knowland, proposed. It was adjudged to be worthy at that time and I think it is even more worthy right now.

This measure would require that all international agreements entered into by our Government be transmitted to Congress within 60 days of their execution. Sensitive agreements would be transmitted to the Committee on Foreign Relations of the Senate and the Foreign Affairs Committee of the House under whatever injunction of secrecy the President deemed appropriate. Of course, there would be no problem with respect to unclassified agreements. Under existing law they are supposed to be published within each calendar year.

This statute has been observed more in the breach in recent years. I would suggest that the present practice whereby the Congress is not made aware of agreements is altogether improper and represents a most unfortunate situation.

Mr. President, I ask unanmous consent to have printed in the RECORD an excerpt from the committee report.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

COMMITTEE ACTION

Public hearings on S. 596, which had been introduced in the Senate by Senator Case on February 4, 1971, provided the committee with testimony expressing the favorable views of a distinguished historian and a leading academician and the unfavorable views of the administration. On October 20, 1971, Prof. Ruhl J. Bartlett of the Fletcher School of Law and Diplomacy provided the committee with an analysis of the problem of secrecy to which this bill addresses itself in the broader context of the historical problem of executive agreements as means of contracting significant foreign commitments. On the basis of this historical perspective, Professor Bartlett expressed his view that—"this proposed measure is so limited in its scope, so inherently reasonable, so obviously needed, so mild and gentle in its demands, and so entirely unexceptionable that it should receive the unanimous approval of the Congress."

On the same day the committee heard testimony by Prof. Alexander M. Bickel of the Yale University Law School, who also expressed strong support for the measure. "In requiring, as S. 596 would do," said Professor Bickel, "that international agreements other than treaties to which the United States is a party be transmitted to it, Congress would be exercising a power that, in my opinion, clearly belongs to Congress under the Constitution."

Professor Bickel also expressed his belief that "Congress has too long tolerated, indeed cooperated in, a diminution of its role in the conduct of foreign affairs and in the decision of questions of war and peace—a diminution that approaches the vanishing point."

In this respect, Professor Bickel concluded, the balance of power between Congress and the President ought to be redressed, to which end S. 596 would constitute "an important step."

The views of the administration were presented to the Committee on October 21, 1971, by Mr. John R. Stevenson, Legal Advisor to the Department of State. Mr. Stevenson expressed the administration's view that the provision of a reliable flow of information to Congress could best be provided for by "practical arrangements" of a nonlegislative nature. Conceding that in the past they (the Congress) have not been informed on a current basis but only ad hoc some years later, Mr. Stevenson concluded nonetheless that "we are dealing with a question of practical arrangements, not with a question of right or authority which would in any way be altered by statute."

On December 7, 1971, the bill was considered by the committee in executive session and ordered reported without amendment and without dissent.

BACKGROUND OF THE BILL

The legislative history of S. 596 goes back to 1954 when a similar proposal was introduced in the Senate by Senators Homer Ferguson of Michigan and William Knowland of California. It was reported favorably to the Senate in August 1954 but no action was taken on the bill. The proposal was revived by Senator Knowland in 1955 and subsequently, in July 1956, favorably reported and then adopted unanimously by the Senate. No action was taken by the House of Representatives.

As adopted in 1956, and as introduced by Senator Case in February 1971, the bill was in a form which had made it acceptable to the Eisenhower administration. As originally conceived in 1954, the proposal called for the submission of all executive agreements to the Senate within 30 days. The Eisenhower administration, through its Assistant Secretary of State for Congressional Relations, Thruston B. Morton, objected that the 30-day time period was too short and objected further to the absence of a provision for the protection of highly classified agreements. In order to meet that objection, the bill was amended to provide for a 60-day transmittal period and also to permit the President, at his option, to submit sensitive agreements not to the Senate as a whole but to the Committee on Foreign Relations "under an appropriate injunction of secrecy." With these amendments the Eisenhower administration offered no objection to the bill.

As reintroduced by Senator Case in 1971, S. 596 was broadened to require the reporting of agreements to the House of Representatives and its Committee on Foreign Affairs as well as to the Senate and its Committee on Foreign Relations. In all other respects the bill as introduced by Senator Case and favorably reported by the Foreign Relations Committee in 1971 is the same as the proposal to which the Eisenhower administration offered no objection in 1954 and 1955.

COMMITTEE COMMENTS

In the view of the Foreign Relations Committee, S. 596 embodies a proposal which is highly significant in its constitutional implications. The bill does not undertake to resolve fundamental questions relating to the treaty power of the Senate and the frequently countervailing claim—or simple use—of executive authority to enter into binding agreements with foreign countries without the consent of Congress. S. 596 undertakes only to deal with the prior, simpler, but nonetheless crucial question of secrecy. The committee shares Professor Bickel's view that the adoption of this bill would be "an important step" in the direction of redressing the balance of power between Congress and the President in the conduct of foreign relations.

The committee does not accept the administration's view, as expressed by Mr. Stevenson, that the sole requirement for the flow of reliable information to Congress is the working out of "practical arrangements." As outlined by Mr. Stevenson, these "practical arrangements" would still fail to establish the *obligation* of the executive to report all agreements with foreign powers to the Congress. In the absence of legislation, even the soundest of "practical arrangements" would leave the ultimate decision as to whether a matter was to be reported or withheld to the unregulated judgment of the executive.

It is well and good to speak, as Mr. Stevenson does, of the executive's recognition of the needs of Congress and of the desirability of "mutual cooperation and accommodation" between the two branches of government. These are highly desirable, but the principle of mandatory reporting of agreements with foreign countries to the Congress is more than desirable; it is, from a constitutional standpoint, crucial and indispensable. For the Congress to accept anything less would represent a resignation from responsibility and an alienation of an authority which is vested in the Congress by the Constitution. If Congress is to meet its responsibilities in the formulation of foreign policy, no information is more crucial than the fact and content of agreements with foreign nations.

As the committee has discovered there have been numerous agreements contracted with foreign governments in recent years, particularly agreements of a military nature, which remain wholly unknown to Congress and to the people. A number of these agreements have been uncovered by the Symington Subcommittee on Security Agreements and Commitments Abroad, including, for example, an agreement with Ethiopia in 1960, agreements with Laos in 1963, with Thailand in 1964 and again in 1967, with Korea in 1966, and certain secret annexes to the Spanish bases agreement.

Section 112(a) of title I of the United States Code now requires the Secretary of State to compile and publish all international agreements other than treaties concluded by the United States during each calendar year. The executive, however, has long made it a practice to withhold those agreements which, in its judgment, are of a "sensitive" nature. Such agreements, often involving military arrangements with foreign countries, are frequently not only "sensitive" but exceedingly significant as broadened commitments for the United States. Although they are sometimes characterized as "contingency plans," they may in practice involve the United States in war. For this reason the committee attaches the greatest importance to the

establishment of a legislative requirement that all such agreements be submitted to Congress.

The committee fully recognizes the sensitive nature of many of the agreements the executive enters with foreign governments. At some point the committee may wish to explore the question whether the executive is exceeding his constitutional authority in making some of these agreements. That, however, is not the issue to which S. 596 addresses itself. Its concern is with the prior, more elemental obligation of the executive to keep the Congress informed of all of its foreign transactions, including those of a "sensitive" nature. Whatever objection on security grounds the executive might have to the submission of such information to Congress is met by the provision of the bill which authorizes the President, at his option, to transmit certain agreements not to the Congress as a whole, but to the two foreign affairs committees "under an appropriate injunction of secrecy to be removed only upon due notice from the President."

As reported by the Foreign Relations Committee, S. 596 would not require the submission to Congress of international agreements entered into prior to the enactment of the bill. It is the strongly held view of the committee, however, that the absence of a retroactive provision in this bill is not to be interpreted as license or authority to withhold previously contracted agreements from the Congress. In keeping with the spirit and intent of the bill, the committee would expect the executive to make all such previously enacted agreements available to the Congress or its foreign affairs committees at their request and in accordance with the procedures defined in the bill.

In conclusion, the committee reiterates its view that the proposal contained in S. 596 is a significant step toward redressing the imbalance between Congress and the executive in making of foreign policy. Twenty years ago Congress undertook an examination of the broader issue of the treaty power through its consideration of the so-called Bricker amendment. One of the essential purposes of the Bricker amendment, in the various forms in which it was considered by Congress, was to place restrictions on the use of executive agreements as a means of contracting significant agreements with foreign powers in circumvention or violation of the treaty power of the Senate.

The present proposal, which was originally initiated as a modest alternative to the Bricker amendment, does not purport to resolve the underlying constitutional question of the Senate's treaty power. It may well be interpreted, however, as an invitation to further consideration of this critical constitutional issue. For the present, however, the committee strongly recommends the adoption of S. 596 as an effective means of dealing with the prior question of secrecy and of asserting the obligation of the executive to report its foreign commitments to Congress.

Mr. CASE. Mr. President, in the interest of saving time, because I know that Members of this body are already very much aware of the purpose and the purport of this bill, I shall be happy to yield any Senator who wishes to express his view.

Mr. ERVIN. Mr. President, I commend the distinguished Senator from New Jersey for bringing this measure to the Senate, and I commend the Committee on Foreign Relations for reporting it without amendment.

I think this is a bill which fills a need which has existed for a long time. There has been no remedy.

Under the Constitution the Senate most certainly has a voice on questions of foreign policy. It has been the custom of the President for a long time to make executive agreements which are never submitted for ratification, as treaties are submitted; these executive agreements have a very wide impact, and their consequences bear heavily on the doctrine of separation of powers.

For example, during the days of the Second World War a presidential agreement was made in the form of an executive agreement which resulted in taking property in New York State out from under the law of New York State, which had control over that property, and turning it over to Russia.

I think everyone who has studied this problem has been perplexed by the extent of executive agreements made by the President without knowledge of Congress and the fact that it is extremely difficult for Congress to obtain an analysis of those executive agreements or to know what is in them. Indeed, this fosters secrecy in Government.

Since the Supreme Court has held that, in some instances, executive agreements take precedence over State laws, this bill guarantees that Congress would be apprised of the existence of such executive agreement and their contents.

Mr. President, I think the Senator from New Jersey has made the Nation his debtor in proposing this particular legislative proposal.

The Subcommittee on Separation of Powers, which I am honored to chair, has long been interested in this area. If the executive branch of the Government is entirely free to determined what it will submit to the Senate in this area, then the constitutional provision requiring Senate participation in the treaty making field is no more than a price of dead parchment.

Mr. CASE. I thank the Senator from North Carolina sincerely for his contribution for his most generous reference to me. Mr. President, when you have on your side the strong right arm of the Senator from North Carolina, you have an ally—if I may mix two metaphors—of incalculable value.

Mr. President, I understand the yeas and nays have been ordered on the measure. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. CASE. I hope when the time comes to vote, which under the understanding already arrived at will be at 3:45 p.m., we may have a showing of unanimous interest and support by the Members of this body for this bill.

For a long time we have been understandably aware of the nature of the problems that have faced us and the world, but because of the enormous increase in the business of the Senate and each of its Members, we have let the important matter of dealing with foreign countries slip more and more from our hands exclusively to the hands of the executive.

I am not blaming the executive in any sense. If there is fault here I think it must rest squarely on our shoulders in the Senate.

When there is a vacuum the President—and not particularly this President but all Presidents—have tended increasingly to take unto themselves what now has almost seemed to be absolute authority in the field of international affairs. The President must be the prime mover in those areas, but the Senate's duty of advice and consent, and not only with respect to formal treaties, or just with respect to ambassadors and other officers, but also all other areas, must be maintained if we are to have sound relations.

I see the Senator from New York on his feet. He has been most helpful in this matter. I now yield to him.

Mr. JAVITS. I thank the Senator. I wish to inquire of the Senator as to the balance in numbers as between executive agreements and treaties so far as the United States is concerned. In other words, how large a problem are we dealing with here in quantity?

Mr. CASE. If the Senator will indulge me for just a moment, that information is here.

Mr. JAVITS. I think there is a ratio of something like 4 to 1.

Mr. CASE. It is over 3. Yes; I think the Senator is correct. It is 4 to 1. The interesting thing about it is that some of the most important things that have been done in recent years have been done by executive agreement, and some of the more routine and simple things have been sent to us as treaties.

Mr. JAVITS. The second point which bears on the answer the Senator just made is this. Is there any difference, as the Senator finds it, between a commitment which the United States makes by a treaty and the commitment the United States makes by executive agreement and as respects the other party? It may make a difference and often does make a difference as to our support, but what about the other party? Does not the other party in every case assume that if the President of the United States made an agreement, that is it, and the United States is bound?

Mr. CASE. I am sure the other party does, although sophisticated diplomats understand the technicalities of our constitutional system. That is not the real point. The point is, what do people in other countries think about agreements our President has made.

Mr. JAVITS. But more profound, the President is making an executive agreement, which is a certification by him, that he can bind the country and does not need Congress; and the people in other countries rely on the fact that it is a valid agreement; our President has given his word, it is a valid agreement, and he needs no further authority.

Mr. CASE. The Senator makes a good point. Carrying it further, the importance of that point in a direct sense is this: The people of this country and the Senate recognize that other countries do rely on agreements the President purports to make on the part of the Nation. There is great reluctance, because we are responsible people, to disturb that reliance.

Mr. JAVITS. Is there any way we have of saying, "No, Mr. President, this is not properly an executive agreement. It should be a treaty, or we should approve

it in the Congress in some way," unless we know it has been made and what it is?

Mr. CASE. Of course, there is no way for us to know it has been made and what it is, until and unless the time comes for us to put some money into it, and then, unless we further abdicate our authority in that basic parliamentary field, we would have at least a technical right to withhold the funds, but not an actual right, in fact.

Mr. JAVITS. That is right.

Is it not true that there are literally hundreds of places in the world where the United States has forces?

Mr. CASE. That is correct.

Mr. JAVITS. And each one of those forces is a tripwire which could, under any construction, even under the War Powers Act, which has been reported to the floor, engender a reaction which could put American forces into hostilities? That is an extremely important matter, and yet it could happen under any one of these multilateral agreements?

Mr. CASE. That could happen, and, as the Senator knows, it has happened.

If I may advert to the matter of the War Powers Act, the Senator's initiative here in connection with the War Powers Act is in the same direction, for the same broad purpose, and I have been so happy to be associated with him in that particular.

Mr. JAVITS. I thank my colleague.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. CASE. Mr. President, will the Senator from West Virginia yield me a little time, unless he wants to use it here now?

Mr. BYRD of West Virginia. Mr. President, I yield the Senator 5 minutes.

Mr. CASE. I promised to yield to the chairman of the committee and to the Senator from Texas (Mr. BENTSEN).

Mr. JAVITS. Mr. President, will the Senator yield me 30 seconds just to complete the thought?

Mr. CASE. I yield.

Mr. JAVITS. I think this is the day of open covenants openly arrived at. It has at last come. What the Senator is doing is implementing what is the new diplomacy. I strongly support that and hope the Senate will pass this bill.

Mr. CASE. I appreciate that. I would perhaps only qualify what the Senator has suggested in saying this is at least the day of open covenants. Whether they should be openly or privately arrived at is a matter of discussion.

Mr. JAVITS. I will accept that.

Mr. CASE. Mr. President, I yield now to the Senator from Arkansas.

Mr. FULBRIGHT. Mr. President, I wish to say that I support the bill. I congratulate the Senator from New Jersey for bringing it before the Senate.

For the purpose of the legislative record, I wanted to have a short colloquy with the Senator. This measure is not in any way intended to abrogate our authority to have submitted to us important matters as treaties. Is it? Perhaps the Senator referred to it before in his colloquy.

Mr. CASE. Only by implication. I am glad to have it made explicit.

Mr. FULBRIGHT. We hear stories and reports. It was recently reported, for example, in the recent exchange with regard to Vietnam—and I have no idea of the validity of it—that the President was thinking of offering a large sum, in the neighborhood of $7 billion, for reconstruction of Vietnam. The Senator would agree that anything of that consequence, whether it be money or the stationing of troops, or anything like that, should not be handled by executive agreement, but should be submitted to the Senate as a treaty. Is that correct?

Mr. CASE. The Senator is correct.

Mr. FULBRIGHT. The Senator may recall recently a report in which there was a move for an agreement for the establishment of a base in the Persian Gulf. The Senator agrees that should be a treaty. Does he not?

Mr. CASE. The Senator is correct.

Mr. FULBRIGHT. I agree with the Senator completely. I wanted to make it clear that because we passed this bill, which I support, that in no way gives validity to such agreements, which I agree with the Senator from New Jersey should be treaties, if we are to have any respect for the true meaning of the Constitution. The Constitution did not anticipate that matters of this importance should be done secretly by executive agreement.

I know the Senator agrees with that. I wanted to emphasize that for fear that, upon the passage of this bill, there will be those who will say, "Well, the Senate has gone on record as endorsing any executive agreement as valid so long as it is reported to the Senate within 60 days."

That is not what the Constitution provided. It provided that the Senate should have the opportunity to express its views and to reject or approve such a treaty when it was submitted.

Mr. CASE. That is correct.

Mr. FULBRIGHT. I wanted to be careful on this point. I have had a little hesitancy about it. It is a step forward in the right direction. It is not unlike reservations I have, again not because I am against the bill, to the bill on war powers of the Senator from New York, in which certain specifications have seemed to me to be subject to the possible interpretation that it authorizes the President to take this action, or is an inducement to him, whereas I do not think that is its real purpose. We are really trying to restrict him; we are not trying to broaden the power. I know the Senator from New York did not intend that.

It may be that my interpretation is not the most logical one, although I felt it was. In this case I think the Senator from New Jersey is quite in order. I think he has done a very fine thing in bringing this measure to the Senate. I shall support it, but I did want to make that point clear.

Mr. CASE. I am glad the Senator did, because it is completely in accord with my own view of the matter. In fact, to have knowledge of and copies of all agreements would make it possible for us to decide whether or not particular agreements should come before us as treaties. We can deal with that question, and we do not estop ourselves by getting copies of the agreements.

Mr. FULBRIGHT. That is right. So often the problem is that once it has been made and accepted, we have not been able to undo it. The only way we can do anything about it is perhaps through a limitation on an appropriation bill, or to refuse to implement it. That is a very drastic remedy, and I doubt that we would be able to muster the votes to do it. We have tried to do it before. It is not an orderly way to do business. That is the great weakness if an executive chooses to ignore us.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. FULBRIGHT. I thank the Senator very much.

Mr. CASE. Mr. President, if I may have 2 minutes more so that I may yield to the Senator from Texas, I would appreciate it.

Mr. BYRD of West Virginia. Mr. President, if the Senator will yield, I will allot my remaining time to the Senator from Texas, if the Senator from New Jersey does not object.

Mr. CASE. The Senator from New Jersey would not be able to object, but even if he were, he would not object.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, I rise in support of and as a cosponsor of the piece of legislation submitted by the Senator from New Jersey, S. 596, a measure which I believe has far greater significance than its simply stated objective of requiring that the Executive communicate with Congerss.

Mr. President, upon my return, to Congress approximately 1 year ago, I was amazed at the extent to which relations between the executive branch and the Congress had regressed during the 16 years of my absence. It is particularly within the realm of foreign policy that I have noticed a great and unhealthy gap in the communications system between the White House and Capitol Hill.

We are all familiar with the long list of foreign policy goals and decisions which Congress has found out about after the fact—and too frequently not from the executive but from other sources instead. This is a condition which must not be permitted to continue if we are to retain the confidence of the people in their Government and in the historic balances of their Constitution.

It is not my purpose here to criticize the Executive's conduct of foreign policy. In general I support the administration's efforts to end the Vietnam war, to open communication with China, and to reach arms agreements with Russia. My purpose here is to seek reaffirmation of congressional powers, for when Congress reaffirms its powers, it also confirms its responsiveness to the American people. The U.S. Congress has the constitutionally derived privilege, indeed obligation, to share in the foreign policymaking process. According to the law of the land, Congress is an equal partner with the executive branch. As an equal partner, and as the elected representative body of the people, it is entitled to a voice in

governing this country and in this country's foreign commitments.

The Founding Fathers wrote into the Constitution a well-known balance between the executive, the legislative, and the judiciary. That balance is being increasingly usurped by an Executive which is constantly appropriating unto itself the foreign policy function it must, by law, share with the Congress.

The guidelines for checks and balances as set forth under the Constitution are not self-perpetuating, for they often run contrary to human emotions, such as the desire for power. Men who achieve the Presidency are usually self-confident, strong, and impatient individuals, reluctant to share power or decisionmaking with anyone else.

As a President, it is easy to rationalize and justify a course of action which leaves the decision process and reporting only to yourself and a self-appointed inner court of courtiers. Why risk or subject such a carefully nurtured and orchestrated agreement which has already been argued out with an adversary country to the possible further criticism and evaluation of a portion of one's government, not completely subject to one's own will? So it is also with those around a President, who certainly are not eager to have their counsel to the President questioned by a source to which they owe no allegiance. And so goes each variance and tilting of the balance of power. Each variance becomes the precedent for the next and further distorts the constitutional guidelines, until finally the current model of a balanced government looks as though one had badly tilted the original. But I blame not just the executive branch, for the Congress is equally to blame.

Too often in recent years Congress has taken a subordinate role to both the executive and the judiciary, a role contrary to the balance of powers envisioned by those who wrote the Constitution. It is not just that the executive has decided to reach out and take these powers, or that the judiciary branch has moved too much into the legislative realm. Part of the reason for the loss of these powers is congressional inaction. Congress itself must share the blame for its dwindling powers for in recent years it has permitted something of a vacuum to develop by its own inactivity and inattention, and the executive branch and the courts have moved to fill that void.

It is high time that the elected body given a share of foreign policymaking powers under the Constitution—the body consisting of elected representatives most directly responsible and responsive to the people and thus closest to control by the people—reasserts itself as an equal partner with the President.

And we must go further than just utilizing the power of the purse strings, the authority of appropriation. Because of the loss of full participation in the making of foreign policy, the Congress has become almost solely dependent on the appropriation process as a vehicle in making its voice heard. In fact, because of the reaction of Congress in some instances to learning of the secrecy and the usurpation of its own prerogatives by the President, Congress has reacted too strongly through powers of the purse. This, at times, has been less than contributory to sound policy. If the Congress rightly shares in the development of programs and policy direction, both domestically and foreign, there will be less of that purse string reaction.

Let me stress, Mr. President, that we in Congress have no constitutional authority in the conduct of foreign affairs; that is, the President's province, and we should not seek to weaken that constitutional power. We must, however, insist on the restoration of constitutional authority of the Congress to share in the formulation of that policy. I want to make that distinction and to insist that the theory apply as the Constitution intends.

I want to emphasize the fact that, in this bill, the Congress does not seek to weaken the President's foreign policymaking powers; rather we simply want to reassert the balance specified in the Constitution. Moreover, as was brought out during the hearings on this legislation, this bill does not destroy Presidential powers, it reaffirms them.

One of the important purposes of this legislation is to make the American people aware of the directions our foreign policy is taking so that we are not caught unaware of shifting trends, and so that we do not find ourselves in a situation, as the Senator from New Jersey has pointed out, in which a President believes he has to take unsupported action—unsupported because the Congress and the people had not been informed of earlier decisions and agreements. We do not want to tie the President's hands in his efforts to engage in foreign policymaking. We want the President to be free to negotiate the agreements he determines in the best interests of the United States. That, I reiterate, is his constitutional prerogative. We are merely asking that he inform the Congress, so we may intelligently perform our function as well.

How can a President hope for a restoration of bipartisan support for foreign policy if one partner to the policy is unaware of secret agreements upon which he justifies a policy which otherwise might appear to be not in the best interests of our country? Congress cannot be put in a position of accepting on blind trust and faith the admonition that a chief executive, or his aide, shielded by executive privilege, is somehow omniscient and omnipotent and always knows best. The judgments of Congress will only be as good as the information on which they are based and to withhold vital information essential to the decision process will result in bad legislation.

At issue, Mr. President, is the Constitution and the powers that the Constitution has allotted to the legislative branch. We must not continue to sit idly by and watch those powers being whittled away by the executive and the courts. The Congress has a responsibility to the people to legislate wisely. This cannot be done if the Congress is not informed. This measure in no way challenges the authority of the President. Rather it merely facilitates the flow of information to the Congress as a whole, or in certain cases, solely to the foreign affairs committees. It would not impede the President's ability to conclude executive agreements. It does not hamper the executive in the free negotiation of these agreements. Rather it reaffirms the constitutional powers of Congress, as the elected representatives of the people, in the policymaking process.

The first step in restoring this vital responsibility of Congress is to require, by law, better communication between the Executive and the Congress. The opening of information to the public, where it is not damaging to the national interest, and to those designated by Congress to fully scrutinize secret agreements where it is determined such is in the national interest, is the first small step toward restoration of congressional equality. There should be the fullest possible public scrutiny of foreign agreements, and the decisions which determine the direction the Nation is going in foreign policy. I submit, Mr. President, that those parties representing the United States in negotiations will be even more diligent in obtaining the best possible deal for our country if they know the agreement will be subjected to the crucible of public debate, or at least the scrutiny of the Congress. This is a nation and a Government responsible to the people, and the people must participate if we are to expect them to believe their Government and retain confidence in it.

The Executive has moved more and more under the cloak of secrecy, not only for the protection of national interest, but also too often secrecy for the sake of protection against criticism or examination of decisions by the constitutionally coequal Congress.

We hear the argument that those in Congress cannot be trusted with foreign policy secrets. I say "absurd."

It has been demonstrated again and again that even the most sensitive information frequently turns up in public print before Congress is aware of the facts, and I refer to some of the "papers" which have been much in the news over the past few months. I do not condone the revelation of secrets; in fact, those who leaked them from positions of responsibility in Government should be made to answer to the laws. The point is, the possibility of secrets becoming public knowledge as pretext for preventing conferring with Congress is just not valid. Secrecy is too often used as a lame excuse for failing to share information with Congress.

During the course of negotiations over an executive agreement, so many groups are involved in working out the language of the agreement that one wonders why the circle of those informed cannot be extended to include the Houses of Congress, or at least the select committees dealing with foreign relations. Is Congress to be less trusted than the Rand Corp., Dr. Elisberg, the myriad of typists and clerks who document, type, and file such reports? Would the President prefer to trust the many staff members of the foreign government who participate in the drafting of such an agreement and owe no allegiance to this country? Does the administration feel that Senators

and Congressmen are any less trustworthy than its own staff which, I might add, has been responsible for a number of leaks recently, including some from the most sacrosanct of secret groups, the National Security Council? Is it too much to ask that as the Xerox machine impersonally disgorges the copies, somewhere on that distribution list be found the words "Congress of the United States"? the price paid for possible loss of secrecy is more than compensated for by the realining of our system of checks and balances and restoration of confidence.

This whole question, certainly, has been too long neglected. I urge the Senate's support for this much-needed bill which is a small step toward rectifying our time-honored and proven system of governmental checks and balances.

It is imperative that we reaffirm the Congress role in the foreign policymaking process and thus strengthen the public's confidence in the ability of the Congress to legislate wisely and on a fully informed basis. We must restore to the people of this Nation the feeling that they know of the commitments their Government has made in their name.

Mr. President, I yield the remainder of my time to the distinguished Senator from New Jersey.

Mr. CASE. Mr. President, I thank the Senator from Texas for his generosity in yielding the remainder of his time, and also wish to express my deep appreciation of the remarks he has made. They are very sound, and I am sure will have the profound effect upon our colleagues that they should have, on their own merits.

I am happy to yield 1 minute to the Senator from Maryland.

Mr. MATHIAS. Mr. President, I appreciate the Senator giving me time to comment very briefly on this bill, which is the result of the distillation of his own experience and his own observation of events within our Nation and in the world over a long period of time.

I think clearly one of the loopholes that has developed over the course of time in the constitutional procedure by which the people of the United States are given an organic part in foreign policy through the provision that the Senate must ratify treaties is the fact that there are now all sorts of international agreements which are given other names than treaties; and while this may appear to be a semantic difference to the layman, it becomes a very important difference to those who are engaged in keeping track of foreign policy in the democratic process.

What the Senator from New Jersey has proposed here, and what is, I think, eminently practical and very necessary, is that the right of the people in our democratic representative system be preserved in the area of foreign policy. That is what this bill would do, and I am very happy to support it.

Mr. CASE. I thank my colleague for his very pertinent comment and his support, which I think reflects, as far as I can tell, the unanimous view of the Members of this body and those whose attention has been directed to the problem.

The PRESIDING OFFICER (Mr. BEALL). All remaining time having expired, the question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. Moss), the Senator from Maine (Mr. MUSKIE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Washington (Mr. JACKSON), and the Senator from Minnesota (Mr. MONDALE) are necessarily absent.

I further announce that the Senator from Georgia (Mr. TALMADGE) and the Senator from Massachusetts (Mr. KENNEDY) are absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. MCGOVERN) and the Senator from Iowa (Mr. HUGHES) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. FANNIN), the Senator from Hawaii (Mr. FONG), and the Senator from Ohio (Mr. TAFT) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The result was announced—yeas 81, nays 0, as follows:

[No. 48 Leg.]

YEAS—81

Aiken	Eastland	Nelson
Allen	Ellender	Packwood
Allott	Ervin	Pastore
Baker	Fulbright	Pearson
Bayh	Gambrell	Pell
Beall	Goldwater	Percy
Bellmon	Griffin	Proxmire
Bennett	Gurney	Randolph
Bentsen	Hansen	Ribicoff
Bible	Hart	Roth
Boggs	Hatfield	Saxbe
Brooke	Hollings	Schweiker
Burdick	Hruska	Scott
Byrd, Va.	Inouye	Smith
Byrd, W. Va.	Javits	Sparkman
Cannon	Jordan, N.C.	Spong
Case	Jordan, Idaho	Stafford
Chiles	Long	Stennis
Church	Magnuson	Stevens
Cook	Mansfield	Stevenson
Cooper	Mathias	Symington
Cotton	McClellan	Thurmond
Cranston	McGee	Tower
Curtis	McIntyre	Tunney
Dole	Metcalf	Weicker
Dominick	Miller	Williams
Eagleton	Montoya	Young

NAYS—0

NOT VOTING—19

Anderson	Hartke	Moss
Brock	Hughes	Mundt
Buckley	Humphrey	Muskie
Fannin	Jackson	Taft
Fong	Kennedy	Talmadge
Gravel	McGovern	
Harris	Mondale	

So the bill (S. 596) was passed, as follows:

Mr. HRUSKA subsequently said:

Mr. President, it was with some reluctance that I voted in the affirmative in the unanimous vote on S. 596 which has just occurred. S. 596 is the bill to require that international agreements other than treaties hereafter entered into by the United States be transmitted to Congress within 60 days after the execution thereof.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of that bill from line 5 on page 1 to line 10 on page 2.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

"§ 112b. United States international agreements; transmission to Congress

"The Secretary of State shall transmit to the Congress the text of any international agreement, other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President."

Mr. HRUSKA. Mr. President, the executive branch, both in its letter to the Foreign Relations Committee commenting on S. 596 and also in the testimony of the legal adviser of the Department of State, has emphasized its full agreement with the general purpose of this bill—to insure that the Congress is informed promptly of the conclusion by the United States of all new international agreements about which the Congress needs to know, if it is to carry out properly its constitutional responsibilities. In its testimony before the committee the administration has emphasized its recognition of the needs of Congress to be informed of agreements with foreign powers and the desirability of mutual cooperation and accommodation in this respect.

At the same time, the administration emphasized its view that the provision of a reliable flow of information to the Congress can be made without this legislation. The administration's witness stated to the committee that the administration believed practical arrangements could be worked out to achieve the end sought by the legislation.

The administration view that such arrangements could be worked out was not accepted by the committee in its report. Certainly it would appear desirable before this legislation is passed to discuss with the administration the possibility of arrangements which would make this legislation unnecessary.

Mr. President, this matter was further discussed in the hearings before the Committee on Foreign Relations. I read from the testimony of John R. Stevenson of the State Department. The Senator from Alabama (Mr. SPARKMAN) was presiding.

Mr. STEVENSON. Mr. Chairman——

Senator SPARKMAN. May I say I realize you

did, you discuss certain sensitive agreements, and you point out the fact that Senator CASE recognizes that in the bill that he has drafted. How would that be handled?

Mr. STEVENSON. Mr. Chairman, to review briefly some of the ground I have covered, at the present time the vast bulk of the agreements other than treaties are published and are transmitted to Congress through the regular procedures from the Government Printing Office.

Senator SPARKMAN. I realize that.

Mr. STEVENSON. So it is only the classified agreements that raise a problem.

With respect to those agreements, we would like to discuss procedures with the committee. Now, the bill, as I understand it, would contemplate that in all cases these agreements would come to the two committees as a whole, and would be retained by the committee. In the past we have had problems involving particularly sensitive agreements which we have worked out in a number of different ways. In some cases there would be a briefing with respect to the subject matter of the agreement. In other cases the agreement could be shown to several interested members of the committee but not permanently retained by the committee.

Senator SPARKMAN. That would be a matter to be worked out.

Mr. STEVENSON. We don't have any specific proposal at this time, but I think our feeling is there is a broader range of possibilities than those contemplated in this legislation.

Mr. President, it would be my hope that when the other body considers this matter, the broader possibilities for handling this problem will be explored.

I notice in the report, on page 2, the following:

> Conceding that in the past they (the Congress) have not been informed on a current basis but only ad hoc some years later, Mr. Stevenson concluded nonetheless that "we are dealing with a question of practical arrangement, not with a question of right or authority which would in any way be altered by statute."

I presume that is a reference, perhaps a little delicate, and not explicit on the surface, to the doctrine of the separation of powers, and whether there is danger that we could invade the doctrine of the separation of powers which applies to some aspects of the executive department's functioning. That is one aspect that very likely should be explored further.

The second one, frankly, is that the efficacy of any steps taken to insure secrecy in the committee would be highly suspect. The bill calls for the filing with the committee of these agreements "under an appropriate injunction of secrecy to be removed only upon due notice from the President."

Anyone who has served in the Congress any small number of years—they do not have to be great in number—knows there is very little assurance that secrecy will prevail. In fact, the opposite is true. Here we would be dealing with the number of those serving on the committee in this body and also with the larger number who are in the relevant committee in the other body. There would be no assurance that the secrecy would be inviolably kept, and if it is a particularly sensitive executive agreement, that might spell trouble for this country.

If there are other ways—and Mr. STEVENSON seems to think there would be other ways—it might be well to take that into consideration.

I voted for the bill. I voted for it reluctantly, because it was called up somewhat unexpectedly, and by the time I had eaten my very modest lunch, following a 4 hour spell here on the floor, the process of voting was already going on. I do not complain about that, but I did feel that this would be a good place to insert a few references to some of the real issues involved. I am hopeful that these remarks may serve also as an indicator to the other body, when it does consider the measure just passed, that the items to which I have referred should be given due consideration.

I yield the floor.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

The PRESIDING OFFICER (Mr. (BEALL). Under the previous order, the Senate will now return to the consideration of the unfinished business, which the clerk will state.

The assistant legislative clerk read as follows: A bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. BYRD of West Virginia. Mr. President, I take the floor to announce that there will be no additional rollcall votes today.

I yield to the distinguished senior Senator from North Caronila (Mr. ERVIN), so that he may lay before the Senate an amendment and make it the pending question for consideration on tomorrow.

Mr. ERVIN. Mr. President, on behalf of the distinguished Senator from Alabama (Mr. ALLEN) and myself, I call up amendment No. 888 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> On page 33, insert the following between line 10 and line 11:
>
> "(5) In subsection (f), change the period at the end of the subsection to a colon, and add thereafter the following words:
>
> "'*Provided, however,* That the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to advise him in respect to the exercise of the constitutional or legal powers of his office.'."
>
> Renumber section (5) as (6).

Mr. BYRD of West Virginia. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I yield.

ORDER FOR ADJOURNMENT UNTIL TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR PERCY TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that tomorrow, after the two leaders have been recognized under the standing order, the distinguished Senator from Illinois (Mr. PERCY) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the Senator from Illinois (Mr. PERCY) tomorrow there be a period for the transaction of routine morning business, not to exceed 30 minutes, with statements therein limited to 3 minutes each, and that at the conclusion of routine morning business the Chair lay before the Senate the unfinished business.

The PRESIDING OFFICER. Without objection, it is so ordered.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent—and I have cleared this request with the distinguished manager of the bill (Mr. WILLIAMS), the distinguished author of the amendment (Mr. ERVIN), and the distinguished Senator from New York (Mr. JAVITS)—that time on the pending amendment, No. 888, offered by Mr. ERVIN, be limited to 2 hours; that the time on the amendment begin to run tomorrow at the time the Chair lays before the Senate the unfinished business; that the time on the amendment be equally divided between the mover of the amendment (Mr. ERVIN) and the manager of the bill (Mr. WILLIAMS); and that time on any amendment to the amendment, debatable motion, appeal, or point of order be limited to 20 minutes, to be equally divided between the mover of such proposal and the manager of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Is it the intention of the distinguished Senator from North Carolina to ask for the yeas and nays tomorrow?

Mr. ERVIN. May I inquire what time the Senate will convene tomorrow?

Mr. BYRD of West Virginia. At 12 o'clock.

Mr. ERVIN. The reason I was asking, I had a hearing scheduled for 10 o'clock.

Mr. President, I do not care to debate

this question this afternoon, except to make one or two observations.

This is an exceedingly important amendment. The bill defines a State and a political subdivision of a State as employers for the first time in the history of legislation of this kind. It defines an employee as one who is employed by an employer. The dictionary states that any person or concern which employs another, usually for wages or a salary, is an employer. Under these provisions, no one is excepted. In other words, the bill is broad enough in its present form to cover Governors of States, State supreme court justices, State legislators, and so forth.

The report states:

A question was raised in committee concerning the application of title VII in the case of a Governor whose cabinet appointees or close personal aides are drawn from one political party. The committee's intention is that nothing in the bill shall be interpreted to prohibit such appointments on the basis of discrimination on account of race, color, religion, sex, or national origin. That intention is reflected in section 703(h) and 706(w) of the law.

In other words, this would give the Federal courts jurisdiction to inquire as to what motive a Governor had in selecting men for his cabinet who would give him advice on his constitutional and legal duties, on if a Governor was actuated in any extent in the selection of an adviser or if the people were actuated in any extent in the election of a public official, so that the Commission could come in and remove that public official from office or that adviser from office and dictate who should be employed in his place.

I respectfully submit that that is going too far, for Congress to empower an Executive agency at the Federal level to tell the Governor of his State, or the people for that matter, whom they can elect Governor, or Supreme Court Justice, or State legislator, or what officials shall be selected to advise the Governor as to his constitutional and legal duties.

Mr. President, it is absurd for a Federal agency to be able to say to a State who its Governor, State officials, or advisers shall be. I respectfully suggest that if Congress is not going to make itself ridiculous, this amendment should be agreed to.

We will argue the amendment more tomorrow.

Mr. METCALF. Mr. President, will the Senator from North Carolina yield?

Mr. ERVIN. I am happy to yield to my good friend from Montana.

Mr. METCALF. Once upon a time, we had a Postmaster General who was a great political adviser to the President. Jim Farley was such an example.

Today, we have in the Department of Justice an Attorney General who is leaving to run a political campaign for his President. He first becomes Attorney General and now he leaves it.

What happens in that sort of situation?

Mr. ERVIN. If that was done at the State level, and the attorney general was an appointee of the Governor, EEOC could come in and tell the Governor that he could not have that attorney general to advise him on the law, that he would have to take someone the EEOC picked out instead.

Mr. METCALF. How could we keep such an Attorney General who comes in and says, "Well, I am going to be Attorney General for awhile," but when the next election campaign comes up, he says, "I am going back into campaigning operations." How can we prevent that?

Mr. ERVIN. We cannot prevent anything at the State level. The EEOC——

Mr. METCALF. I am trying to prevent something at the Federal level.

Mr. ERVIN. In the old days, I thought that a Postmaster General was the appropriate person to advise the President, because he did not have anything else to do except to read the Postal Guide.

Mr. METCALF. We had a lot of appointments but——

Mr. ERVIN. This bill does not deal with it at the Federal level. It deals with it at the State level.

Mr. METCALF. I was wondering what happens when we have an Attorney General who comes in at the Federal level, after he has been working at a campaign level and gets appointed Attorney General, and then after 2½ or 3 years he moves it back into his campaign.

Mr. ERVIN. Mr. President, I am trying to get for the Governor of a State the same authority to pick out his attorney general as the President has to pick out his Attorney General or campaign manager.

Mr. WILLIAMS. Mr. President, I should like to ask the Senator one or two questions just to see if there is a way to describe the scope and the limits of the amendment. Certainly it is clear that an elected official at the State or municipal level should not be covered in any way by this bill as an employee.

Mr. ERVIN. The Senator is correct. However, I feel that he is covered now.

Mr. WILLIAMS. It says "as an employee." Frankly, I do not understand the terminology. It says that the term "employee" shall not include any person elected to a public office in a State or political subdivision of any State by the qualified voters thereof.

Mr. ERVIN. Mr. President, under the Civil Rights Act of 1964, an employee is defined in substance as one who is employed by an employer. This is just to put an exception to that provision and make it clear that the term employee is not to be construed as including an elected official or a person chosen by the elected official to advise him as to his constitutional and legal duties.

I think that the point the Senator is driving at is that this is narrowly drawn to make certain that the only persons covered by the bill at a State or local level are elected officials and the people who advise them as to their constitutional and legal powers. It would leave covered by the bill those people who merely carry out the directives.

It would only exclude elected officials and those who give them advice as to how they should carry out their legal and constitutional duties, and not those who actually carry them out as administrative officials.

Mr. WILLIAMS. It would certainly be the Governor's attorney general, for example.

Mr. ERVIN. The Senator is correct.

Mr. WILLIAMS. The Governor of the State of New Jersey has personal counsel. This would cover that particular officer or individual.

Mr. ERVIN. The Senator is correct. However, it would not exclude a person who merely carries out the advice which the elected official would receive from those who advise him.

Mr. WILLIAMS. Mr. President, in other words that would be the law clerks and the law assistants of the personal counsel. The Governor or mayor would not be included within this term.

Mr. ERVIN. We are getting into a rather gray area there.

Mr. WILLIAMS. I wanted to see if we could find where the clear area is and the ambiguous area.

Mr. ERVIN. They would be excluded from this exclusion or this exception, because the only person excluded besides the elected official is the person who advises him. I chose that word advisedly. It would be the person who would advise him in regard to his legal or constitutional duties. It would not just be a law clerk. The Attorney General picks his own employees.

Mr. WILLIAMS. Mr. President, I have an instinctively favorable reaction to this particular exemption or exclusion under the law. However, I am glad that we are going until tomorrow, because some of the ambiguity can be worked out before I commit myself to it.

Mr. ERVIN. Mr. President, I really think that makes a bad bill a little less obnoxious, because I do not think the author of this bill ever intended to cover elected officials, those elected by the duly qualified voters. However, I fear that they have covered them by the breadth of the language.

In my own county we have a board of commissioners appointed by the people. They run the county affairs. They choose for themselves a legal adviser, a county attorney. I think they ought to be allowed to choose that attorney without any restrictions whatsoever, because a person ought to know who he relies on for advice as to the duties of his office. This would exclude the attorney, but not any other Government or county official, such as clerks or secretaries or people like that.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. JAVITS. Mr. President, I would like to point out for the RECORD that we have said at page 11 of the report:

A question was raised in the Committee concerning the application of Title VII in the case of a Governor whose cabinet appointees and close personal aides are drawn from one political party. The Committee's intention is that nothing in this bill should be interpreted to prohibit such appointments unless they are based on discrimination because of race, color, religion, sex or national origin. That intention is reflected in sections 703(h) and 706(w) of the law.

Incidentally, that should be 706(g) and not (w)